Supreme Court, U.S.
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No. _____

In The Supreme Court of the United States

October Term, 1998

FUNDAMENTALIST CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, et al.,

Petitioners,

vs.

CYRIL BRADSHAW, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF UTAH

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

The issues presented are:

1. In the absence of fraud or misrepresentation, does awarding the equitable remedy of unjust enrichment against a church or its leaders constitute adjudication on the basis of neutral principles of secular law? This important question was left unresolved by *Jones v. Wolf*, 443 U.S. 595 (1979).

2. Does judicial application of a religiously neutral, generally applicable law to resolve a church property dispute necessarily constitute a resolution of the dispute in accordance with neutral principles of secular law? This important question was left unresolved by *Employment Division v. Smith*, 494 U.S. 872 (1990).

3. Must courts refrain from applying religiously neutral, generally applicable laws to church property disputes when refraining will reduce or eliminate church-state entanglements that inhibit religious beliefs or practices? This important question was left unresolved by *Agostini v. Felton*, 521 U.S. ___, 117 S.Ct. 1997 (1997).

LIST OF ALL PARTIES TO THE PROCEEDING

Defendants/Petitioners: Fundamentalist Church of Jesus Christ of Latter-Day Saints, United Effort Plan, Rulon T. Jeffs, Fred M. Jessop, LeRoy S. Jeffs, Parley J. Harker (deceased), James K. Zitting, Winston K. Blackmore, Truman I. Barlow.

Plaintiffs/Respondents: Cyril Bradshaw; Connell J. Bateman; Benjamin G. Bistline; Alma J. Burnham; Claude S. Cooke; Donald B. Cox; Harvey J. Dockstader; T. David Dockstader; Boyd Dockstader; Marko J. Dutson; George Hammon; Jacob Legrand Hammon; Merrill Harker; James M. Pipkin; Cora Fischer Stubbs; David L. Stubbs; Ray Timpson; Fayila Maureen Blackmore Williams; John M. Williams; Roger E. Williams; Thomas J. Williams; Don D. Timpson; John W. Timpson.

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REFERENCES TO DECISIONS BY LOWER COURTS

The trial court entered an unpublished Memorandum Decision and Order on January 11, 1996 (Appendix A); and an unpublished Memorandum Opinion on September 5, 1996 (Appendix B).

The Utah Supreme Court entered its decision on September 1, 1998. The decision is published as *Jeffs v. Stubbs*, 1998 WL 566069, 351 Utah Adv. Rep. 3, ___ P.2d ___ (Utah 1998). (Appendix C.)

GROUNDS FOR SUPREME COURT JURISDICTION

The Utah Supreme Court's decision was entered September 1, 1998. Petitioners filed a timely petition for rehearing which was denied November 18, 1998. (Appendix D.) The Supreme Court has jurisdiction to review the decision by writ of certiorari pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS AT ISSUE

The First Amendment to the United States Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

STATEMENT OF THE CASE

The Fundamentalist Church of Jesus Christ of Latter-Day Saints ("FLDS Church" or "Church") is a continuation of a religious movement, initially known as the "Priesthood Work," which subscribes to fundamentalist "Mormon" religious principles.

In 1942, the leaders of the Priesthood Work adopted a written Declaration of Trust establishing the United Effort Plan trust ("UEP") (Appendix F). The leaders created the UEP to implement the religious principle of the Law of Consecration and Stewardship, also known as the "United Order," set forth in the Church's constitution. The principle calls for a people gathered together on consecrated ground, united in faith, living under the direction of religious leaders. The trial court found that the UEP is a religious institution. The trust holds title to property consecrated by donation to the Priesthood Work and is charged with responsibility for administering the land to accomplish the religious purposes to which the property is dedicated. The individual petitioners are trustees of the UEP.

The UEP now owns most of the land that comprises the Hildale, Utah and Colorado City, Arizona communities and some 5,000 church members live on trust property. The trial court found that, according to the teachings and beliefs of the Church, "the UEP constituted a communal effort to build up the Kingdom of God on Earth by developing a community for the adherents to occupy." The trial court also found that the use of UEP land was "conditioned upon religious beliefs commonly held and widely known in the community." Those beliefs included the teaching that the purpose of the UEP was to advance the group toward the United Order by

providing for management of use of the land by a "benevolent and inspired group of God fearing leaders."

The Church, the Trust, and the other petitioners here were defendants in this action, filed by 20 former members of the Church. Although many claims were asserted in the case,[1] the case was essentially an action for possession of the land and for distribution of the UEP trust.

The trial court bifurcated the case and all claims except breach of fiduciary duty, accounting, and distribution of trust were tried to the court for six weeks in December, 1994 and May, 1995. The court issued a 112 page Memorandum Decision on January 11, 1996, which along with a later Memorandum Opinion of September 5, 1996, are the court's findings of fact and conclusions of law. In the findings, the court confirmed the religious nature and mission of the UEP and rejected all of the plaintiffs' claims except unjust enrichment. On the basis of unjust enrichment, the court granted each plaintiff except Fayila Williams a lifetime right to occupy land owned by the UEP. The court subsequently granted summary judgment to the UEP and its trustees on the fiduciary, accounting, and distribution claims.

These issues were raised in appellants' Answer (R. 1288-89), preserved in the Pre-Trial Order (R. 1565), and asserted again in appellants' Post-Trial Memorandum (R. 1695-96, 1713) and Motion to Dismiss (R. 1993-98). The trial court ruled on the issues in its memorandum opinion (R. 1828). (Pertinent excerpts from these documents are set forth

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[1] Plaintiffs' claims were (1) breach of express contract, (2) breach of implied contract, (3) negligent misrepresentation, (4) constructive fraud, (5) estoppel, (6) unjust enrichment/occupying claimants, (7) breach of fiduciary duty, (8) accounting, and (9) distribution of the UEP trust

in Appendix E.) Petitioners also raised these issues at the state supreme court level in their briefs and in their Petition for Rehearing.

The FLDS Church traces its roots to the beginnings of the Mormon Church in the 1830s. Members of both churches accept the Bible, the Book of Mormon, the Doctrine and Covenants ("D. & C.")[2], and the Pearl of Great Price as holy scripture. Members of the FLDS Church believe that their Church is the true continuation of the church founded by Joseph Smith in 1830. The split occurred around the turn of the century when the Mormon Church, under great pressure from the Federal government, abandoned certain beliefs which members of the FLDS Church believe were ordained by God, including the Law of Consecration and Stewardship (D. & C. 42:30-39) and the principle of plural marriage (D. & C. 132:61-62).

It is the Law of Consecration and Stewardship (also known as the United Order of Heaven) which is at issue in this case. The Law, which in its present form dates to 1831, is set forth in Section 42 of the Doctrine and Covenants. One author has explained the Law as follows:

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[2] The beliefs at issue in this case derive primarily from the Doctrine and Covenants.

> The Doctrine and Covenants is a compilation of revelations, most of which were received by the Prophet Joseph Smith for the establishment and governance of the Kingdom of God in the latter days. It is a standard work of the Church and functions as its open, ever-expanding, ecclesiastical constitution.

1 D. Ludlow, ENCYCLOPEDIA OF MORMONISM 405 (1992).

> Upon the basic principle that the earth and everything on it belongs to the Lord, every person who was a member of the church at the time the system was introduced or became a member thereafter was asked to "consecrate" or deed all his property, both real and personal, to the bishop of the church. The bishop would then grant an "inheritance or "stewardship" to every family out of the properties so received, the amount depending on the wants and needs of the family, as determined jointly by the bishop and the prospective steward. . . . It was expected that in some cases the consecrations would considerably exceed the stewardships. Out of the surplus thus made possible the bishop would grant stewardships to the poorer and younger members of the church who had no property to consecrate.

L. Arrington, F. Fox & D. May, BUILDING THE CITY OF GOD 15 (1976) (footnote omitted). The principle is also set forth in the Bible[3] and in the Book of Mormon.[4]

UEP property is not managed by secular rules to promote temporal or commercial gain. The trial court found that "[t]he property was intended to be used to benefit those that the trustees chose as beneficiaries in the future according to the 'just wants and needs' of the beneficiaries" at the time, consistent with the Law of Consecration and Stewardship as taught in scripture.[5] Young men who have proven themselves worthy approach one of their religious leaders and re-

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[3] Acts 4:32-35. In addition, the story of Ananias and Sapphira in Acts 5 demonstrates application of the law of consecration by Peter.

[4] 4 Nephi 2-3.

[5] *Doctrine & Covenants* 82:17 (Ex. T96).

quest the use of a "lot" on UEP property. If the leaders judge the applicant worthy, he is invited to build a home on UEP property, with the help of the religious order. The invitation occurs in a religious context between the member and the Bishop, and no documentation accompanies it. The resulting homes are consecrated and dedicated to the UEP and the Church in order to further Church's religious implementation of the Law of Consecration and Stewardship. Since the UEP's formation, the use and occupancy of all UEP property, including residential lots assigned to the faithful, has been determined by the religious leadership of the Church.

Between 1942 and 1979 each of the plaintiffs moved onto UEP property as a way to participate in the religious program of the Church. The homes occupied by the plaintiffs were constructed with community help and the individual labor and material contributions of the plaintiffs.

A religious schism developed in the group, which came to a head in the mid-1980s, raising for the first time the issue of dissidents' rights in trust property. The resulting religious conflict was in part expressed by the demand of the dissidents that the trust be dissolved and that parcels of UEP land be distributed to each occupant. Plaintiffs were part of the dissident group. The UEP asserts that the plaintiffs are tenants at will on its property, and that the UEP retains the full panoply of ownership rights in the property. Those rights include the right to reserve UEP property for use only by faithful members of the FLDS Church.

The trial court heard testimony from every plaintiff, from the religious leaders, and from many other members of the community. From that evidence, the court found that the plaintiffs knew that "use of the land was conditioned upon religious teachings and beliefs commonly held and widely

known in the community." It found that the plaintiffs knew that they did not own the property and that complete information was available to all of the plaintiffs regarding the terms of their occupancy, including their status as tenants at will.

The plaintiffs' claims were primarily contractual in nature. The court rejected those claims, ruling:

> Nothing in the actions of the parties demonstrates a tacit agreement that the plaintiff would have anything other than the temporary use of the UEP lot until the Trustees determined that the benefit would be withdrawn. A contract does not arise from the unsubstantiated assumptions of one of the parties.

In detailed findings which the court used as the model for its findings regarding each plaintiff, the court found as follows regarding plaintiff Cyril Bradshaw:

> (a) Mr. Bradshaw was well aware that the UEP was governed by a Declaration recorded on the public records and had been prior to his association with The Work. He chose not to read it, even knowing that it might relate to his right, or privilege, of occupying a UEP lot. If he was mislead [*sic*] by lack of the information in the Declaration, he was as much at fault as the UEP.
>
> (b) Mr. Bradshaw was not specifically told that he would be a tenant at will on the UEP lot until he had already constructed improvements on the lot, nor did he ask. He was apparently satisfied that his "just wants and needs" would be met by his religious leaders and chose not to ask about the terms of his use of the land provided by the UEP. One who seeks relief because of injury from misrepresentations of another cannot simply believe

whatever is said. Such a person has a duty to exercise the degree of care to protect his own interests as would be exercised by any reasonable and prudent person under like circumstances. [See *Jardine v. Brunswick*, 423 P.2d 659, 662 (Utah 1967)]. To rely on one word in a conversation in a matter of this import is not reasonable.

(c) The Court is persuaded that Mr. Bradshaw and the other plaintiffs herein were aware, because of the purpose and nature of the movement they were with, that the Short Creek area was being developed as a refuge for the faithful adherents to The Work. Each plaintiff was invited to help build up the community and to practice his own religious beliefs there because he was in harmony with others living there.

If Mr. Bradshaw had read the Declaration which he knew was recorded in Mojave County, he would have learned that even if he was a member of the UEP, he could be expelled and loose [*sic*] all claim on the trust by a majority vote of the trustees for actions prejudicial to the trust, and that as a non-member beneficiary, he could be deprived of benefits conferred by the Trust in the event that the Trustees deemed it unwise to confer the benefit. Mr. Bradshaw cannot now claim misrepresentation because he didn't understand that if he fell out of harmony with the trustees of the trust his right to use trust land could be terminated. Such knowledge was widely available in the community to anyone who inquired.

(d) Mr. Bradshaw never testified that he made contributions to the UEP or its enterprises to gain an interest therein, nor did the other plaintiffs. The inference from their statements was that they considered their

contributions to be religious donations to The Work, although the UEP may have benefited.

> Mr. Bradshaw's motivation for his labor and money was to comply with the requests of his religious leaders, regardless of the ownership of the project. He never claimed in his testimony that he was mislead [*sic*] by the failure of the UEP to tell him that the trust did not own the projects he worked on. It simply was not a matter of concern to him when the contributions were made as they were religious contributions.

In spite of strong, individualized findings as to each plaintiff that they clearly understood that they did not own the property and that they were guests in a religious community; and in spite of the fact that the terms of occupancy were communicated in the form of religious scriptures and sermons, the trial court concluded that "[t]he UEP must bear a large share of the blame for the confusion as to the terms of occupancy since it did not communicate" those terms clearly to each plaintiff. The court determined that it would be unfair for the UEP to "acquire a large home suitable for housing another of its adherents at little or no cost" by removing a plaintiff. Acting under the theory of unjust enrichment, the court granted each of the plaintiffs[6] a conditional lifetime right of occupancy, and directed that if the UEP elects to end any plaintiff's occupancy for any reason, including on the basis of religious incompatibility with The

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[6] The court rejected the claims of plaintiff Fayila Williams on the basis that use of UEP land was granted only to the head of each household. Mrs. Williams did not deal directly with representatives of the UEP, as those dealings were with her now deceased husband. The court's denial of relief to Mrs. Williams was consistent with the court's award of life interests which were measured by the lives of the male heads of household in each family.

Work, the UEP must pay that plaintiff the amount of the benefit resulting to the UEP.

Petitioners appealed the trial court's decision to the Utah Supreme Court on several grounds. Petitioners argued that the trial court's decision to apply the law of unjust enrichment in this setting required the court to weigh the importance and fairness of religious beliefs, and amounted to prohibited meddling in the ecclesiastical decisions reserved to the leaders of the Church. The trial court made specific findings placing allocation of UEP property among members inside the protected realm of religious decision-making. Having done so, the court then impermissibly judged the fairness of the leaders' religious decisions, overturning those decisions in favor of its own, secular, standard of fairness.

The Utah Supreme Court rejected petitioners' arguments.[7] It assumed that petitioners' free exercise rights were burdened by the trial court's decision, but held that the plaintiffs' right to apply to the courts for relief is a fundamental right which supersedes the religious rights at issue, and that the state has a compelling interest in ensuring that all parties are able to resolve legal disputes before a neutral tribunal. 351 Utah Adv. Rep. at 9. The court did not address petitioners' argument that the ruling violated the principle of *Jones v. Wolf,* 443 U.S. 595 (1979), and the other "church property" cases because the trial court's intrusion into management of the trust could not have been neutral when judgments of fairness were made. The court held instead that "courts must treat property disputes between religious

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[7] In its decision, the Court asserted that petitioners had argued that disputes between religious entities were immune from judicial decision. That characterization seriously oversimplified and overstated the narrowly tailored arguments the Church and UEP made.

factions 'in the same manner they treat disputes among other voluntary associations.'" *Id.* at 10 (citation omitted).

In addition, the trial court decided that the UEP was a charitable trust under Utah law. This necessarily implied that the trust had no identifiable beneficiaries; thus, the plaintiffs could not be beneficiaries and the plaintiffs lacked standing to assert their trust claims. The trial court thus granted summary judgment on those claims. The Utah Supreme Court reversed the trial court's conclusion that the trust was charitable in nature, reinstated the trust claims, and remanded the case for determination (1) whether the plaintiffs are beneficiaries of the UEP with standing to assert those claims; and (2) if so, whether there has been a breach of fiduciary duty entitling the plaintiffs to an accounting or other relief.

REASONS WHY CERTIORARI SHOULD ISSUE

I. IN THE ABSENCE OF FRAUD OR MISREPRESENTATION, ACTIONS AGAINST A CHURCH OR ITS LEADERS CANNOT BE ADJUDICATED WITHOUT VIOLATING THE CONSTITUTIONAL PROHIBITION ON JUDICIAL INTERPRETATION OF RELIGIOUS DOCTRINE.

A. *Proper Application of an Equitable Remedy to Resolve a Church Property Dispute Necessarily Entails Judicial Interpretation of Church Doctrine.*

This Court has unambiguously and consistently held that courts may never adjudicate controversies between religious claimants when doing so would require judicial interpretation of the content or merits of a religious belief or practice. *Jones v. Wolf*, 443 U.S. 595, 607 (1979); *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 708-09

(1976); *Presbyterian Church v. Hull Church*, 393 U.S. 440, 449 (1969). Courts are constitutionally permitted to adjudicate church property disputes on the basis of "neutral principles of law," but only so long as no interpretation or consideration of religious doctrine is required. *Jones v. Wolf*, 443 U.S. 595, 602-04 (1979).

It is not religiously neutral for a court to resolve a church property dispute by ignoring the religious considerations that are at the heart of the dispute. An equitable remedy requires a court to balance considerations of justice weighing for and against each disputing party.[8] Application of equitable remedies is thus inherently judgmental and subjective. When such remedies are applied in a religious context, they would normally call for weighing the fairness of religious beliefs or practices that influenced one or both parties to the dispute to act as they did. Because of the constitutional prohibition against judicial interpretation of religious doctrine, however, a court cannot include in the equitable balance any considerations of justice that would require the court to interpret the content or merit of a religious belief or practice.

Thus, judicial use of an equitable remedy as a "neutral principle" of secular law to resolve church property disputes necessarily requires that courts ignore considerations tied to religious beliefs or practices, no matter how strongly these

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[8] *See, e.g.*, GEORGE L. CLARK, EQUITY § 33, at 49 (1945) (quoting PHELPS, JURIDICAL EQUITY § 138):

> "By juridical equity is meant a systematic appeal for relief from a cramped administration of defective laws to the disciplined conscience of a competent magistrate, applying to the special circumstances of defined and limited classes of civil cases the principles of natural justice, controlled in a measure as well by considerations of public policy as by established precedent, and by positive provisions of law."

might point to resolution in favor of one party or the other. But resolving a church property dispute on the basis of equitable principles by ignoring considerations of justice which favor one party to the dispute over another is not an appropriate deployment of either equitable or constitutional principles. A court applying an equitable remedy to a church property dispute has no choice but to refrain from weighing in the balance considerations of justice requiring the interpretation of religious doctrine. This use of equity, however, results in the "equitable" resolution of a dispute by a means that is, by definition, inequitable, because it excludes important and relevant considerations of justice from the balance. *Cf.* CLARK, *supra n.8*, § 32, at 48 (one of the most important maxims of equity is "[a] rule of equity will never be applied to reach an inequitable result").

This Court has stated that there might be various ways in which courts might properly adjudicate church property disputes. *See Jones*, 443 U.S. at 602; *Hull Church*, 393 U.S. 440, 449 (1969). This Court has held, however, only that awarding disputed church property to the holder of legal title on the basis of which faction departed from the church's original doctrine is *not* adjudication on the basis of a neutral principle of law, *see Hull Church*, 393 U.S. at 450, and that awarding disputed property to the holder of the legal title *is* adjudication on such basis, *see Jones*, 443 U.S. at 601, 603-04; *see also Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 723 n.15 (1976) (noting that the "formal title" doctrine does not apply because none of the disputed actions changed the legal title of the underlying church property). The expansion of the meaning of "neutral principles" from the formal title rule expressly approved in *Jones* to a rule that allows adjudication of church property disputes on the basis of something as indeterminate and wide-ranging as equitable principles has been undertaken by

some lower federal and state courts, but has never been considered by this Court.[9]

In giving religious dissidents life estates in UEP property and exempting them from the UEP's religious management, the court implicitly determined that the religious doctrine that had previously been the basis for the parties' relationship was unimportant. The trial court found that the purpose of the UEP "was to advance the group toward the United Order," and constituted "a communal effort to build up the Kingdom of God on Earth by developing a community for the adherents to occupy." It also found that donating lands, labor, and other personal property to the use of the UEP is one important way in which members of the Church express their commitment to the religious principle of the United Order. The trial court further found that an essential element of the United Order principle is management by religious authority. Land management decisions must be made by the religious leadership of the Church, because religious management of the consecrated lands of the United Order is a fundamental

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[9] *See, e.g., Bates v. Cekada*, 130 F.R.D. 52, 55 (E.D. Va. 1990) (use of "equitable powers to order an accounting of property and to impose a constructive trust" on disputed church property is adjudication on the basis of neutral principles); *Bjorkman v. Protestant Episcopal Church*, 759 S.W.2d 583, 587 (Ky. 1988) (assuming that equitable remedy of constructive trust may be imposed on disputed church property as adjudication under neutral principles). *See generally Paradise Hills Church, Inc. v. International Church of the Foursquare Gospel*, 467 F. Supp. 357, 362 (D. Ariz. 1979):

> The formal title doctrine appears to be the only recognized example of a neutral principle. It involves simply identifying the title holder of the property. . . . A more liberal interpretation of neutral principles permits civil courts to examine not only deeds, but also reverter clauses and state corporation laws. Presumably this view permits civil courts to examine articles of incorporation and bylaws of a hierarchical church as well.

precept of the United Order. The consecration of these donations to the religious purposes of the Church is a holy act and a visible and collective expression of religious purpose.

The trial court's decision effectively erases the religious principle of the United Order from the doctrinal structure of the Church for the purposes of constitutional review. Similarly, the court ignored the obvious sacerdotal dimension of the word "consecration" in order to avoid recognizing the religious reach of the issues presented in this case.

In affirming the trial court, the Utah Supreme Court reasoned that the constitutional prohibition on judicial interpretation of religious doctrine has "no application to this case because no question of church doctrine is central to this case." In essence, that court held that "neutral principles" analysis allows or even requires the court to blind itself to all evidence of religion in resolving the dispute. On this basis, the court has permitted the trial court to adjust the equities between religiously motivated actors based upon that court's assessment of the fairness of the situation and the adequacy of sermons from the pulpit in explaining the situation to adherents of the faith. By interpreting some FLDS beliefs and practices and ignoring others, the trial court and the Utah Supreme Court violate both the constitutional prohibition on judicial interpretation of religious doctrine and the mandate that church property disputes be decided only according to neutral principles of secular law.

Ignoring the religious dimension of church property disputes in order to fit within the neutral principles doctrine of *Jones* is self-defeating. Such ignorance inevitably ends in the entanglement of the court in ecclesiastical matters, often to the same extent as explicit judicial interpretation of religious doctrine in violation of the prohibition on such interpretation.

In this case, the trial court's determination that unjust enrichment is a "neutral principle" by which it could resolve the dispute between dissidents and the FLDS Church has effectively substituted the trial court for FLDS leaders as the manager of the UEP trust. Because the life estates awarded by the trial court to each dissident are so closely tied to the particular facts and personal circumstances of each dissident, each time that a new question arises during the life of any dissident regarding the nature and extent of his occupancy rights on UEP lands, the parties have been required to request guidance from the trial court. For example, under the trial court's order, the dissidents have no legal obligation to obey orders of the FLDS leaders who are the trustees of the UEP. Thus, the court has had to enter detailed orders concerning assessment, collection, and payment of property taxes , construction of improvements, and other issues relating to the life estates granted the dissidents under the court's ruling. FLDS doctrine assigns those decisions to the Bishop, to be made based upon the "just wants and needs" of the church membership.

The trial court's *de facto* management of the UEP trust, and the degree to which it has intruded upon the religious beliefs and practices of the Church, became evident in a particularly dramatic way in an incident that arose immediately after the court issued its unjust enrichment ruling. Plaintiff Claude Cooke moved out of his home, turning its use over to four unsupervised teenage girls. These children used the home as their personal party house, allowing young adults and teenagers to assemble in the home without adult supervision to smoke, consume alcohol, and engage in other behavior that violates the religious beliefs of the FLDS church and is deeply offensive to its members.

Because the trial court's order divested the FLDS leaders who manage the UEP of control over portions of UEP property occupied by dissidents, the leaders were forced to move the trial court to put an end to the offensive behavior. Although the behavior and its offensive nature were undisputed, the trial court declined to intervene, commenting that the behavior found to be so offensive to the members of the FLDS Church was not particularly offensive to the court or to the public generally, and determining that property occupied by dissidents was subject only to public standards of behavior to be determined by the court, and not by the religious beliefs and practices of the Church.

B. *Courts Are Never Justified in Interpreting Religious Doctrine, and Courts Properly Decide Church Property Disputes by Ignoring the Religious Beliefs and Practices That Inform Equitable Remedies Only in Case of Fraud or Misrepresentation by Church Leaders.*

This Court has suggested that the potential injustice of the prohibition on interpretation of religious doctrine can be tempered by treating situations involving fraud by church leaders with a less stringent rule. *See, e.g., Gonzalez v. Archbishop*, 280 U.S. 1, 16 (1929) (per Brandeis, J.) ("*In the absence of fraud, collusion, or arbitrariness*, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive. . . .") (dictum) (emphasis added).[10] No fraud or collusion was present in this

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[10] The Court has never ruled on the constitutionality of the so-called "marginal review" of fraud or collusion suggested by *Gonzalez*, *see, e.g., Serbian Eastern Orthodox*, 426 U.S. at 712; *Hull Church*, 393 U.S. at 450-51 & n.7, but it has held that courts may not review church decisions for arbitrariness,

case, however. The trial court found that the UEP had complied with all objective legal standards—that is, that there had been no fraud, overreaching, breach of fiduciary duty, breach of contract, or waiver, and that each of the plaintiffs knew or had access to information concerning the terms of his or her use of the property.

The Utah Supreme Court, by contrast, held that even assuming that petitioners' free exercise rights were burdened by the trial court's awarding the dissidents life estates in UEP property, this burden was justified by the state's "'paramount' interest . . . 'of the highest order'" in providing "that all parties are able to resolve legal disputes before a neutral tribunal." 351 Utah Adv. Rep. at 9 (quoting *Sherbert v. Verner*, 374 U.S. 398, 407 (1963)). Although this Court has recognized that states have a legitimate interest in providing a forum for adjudication of disputes among its citizens, it has cautioned that this interest cannot under any circumstances justify judicial interpretation of religious doctrine. *E.g., Jones*, 443 U.S. at 602. Indeed, since the state's interest in providing a forum for resolution of disputes is present in every church property dispute that proceeds to litigation, allowing this interest to override any intrusion on church autonomy would obliterate the protection of religious free exercise so carefully calibrated by this Court in its church property decisions.[11]

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see Serbian Eastern Orthodox, 426 U.S. at 713-16.

[11] *See, e.g., Jones*, 443 U.S. at 602 ("[T]he First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice."); *Serbian Eastern Orthodox*, 426 U.S. at 709 ("Even when rival church factions seek resolution of a church property dispute in the civil courts there is substantial danger that the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs."); *id.* at 733 (Rehnquist, J., joined by

Contrary to the Utah Supreme Court's holding, no particularly important or overriding state interest was presented in this case. The state's interest in monitoring the fairness of a religious program is far from overwhelming;[12] indeed, "fairness" of a religious practice is not a legitimate subject of judicial inquiry.

II. A JUDICIAL DETERMINATION THAT A LAW IS RELIGIOUSLY NEUTRAL AND GENERALLY APPLICABLE DOES NOT BY ITSELF MEAN THAT SUCH LAW IS A "NEUTRAL PRINCIPLE" WHICH MAY BE CONSTITUTIONALLY APPLIED TO RESOLVE A CHURCH PROPERTY DISPUTE.

A. *Even If a Law Is Religiously Neutral and Generally Applicable under this Court's Free Exercise Jurisprudence, a Court May Not Apply Such a Law Against Religious Individuals or Institutions If Doing So Requires the Court to Interpret Religious Doctrine.*

This Court has not decided a church property case since *Jones v. Wolf*, 443 U.S. 595 (1979), nearly twenty years ago.

Stevens, J., dissenting) ("The [constitutional] rule . . . which seems fairly implicit in the history of our First Amendment, is that the government may not displace the free religious choices of its citizens by placing its weight behind a particular religious belief, tenet, or sect."); *Hull Church*, 393 U.S. at 446 (quoting *Watson v. Jones*, 80 U.S. (13 Wall.) 666, 728-29 (1872) (emphasis added)) ("'It is of the essence of [voluntary] religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.'").

[12] To the contrary, state government was established in Utah above all to protect and preserve inherent and inalienable rights including the rights of religious liberty. Utah Const., art. I, sec. 1, 26, and 27.

The jurisprudential landscape of the religion clauses has changed considerably since *Jones* was decided. This Court has since held that believers are not entitled to exemptions under the free exercise clause when their religious practices are incidentally burdened by religiously neutral, generally applicable laws. *Employment Division v. Smith*, 494 U.S. 872 (1990); *see also City of Boerne v. Flores*, 117 S.Ct. 2157, 2160-61 (1997); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993). This Court has also observed in dicta that a legislature might choose to exempt believers from the obligation to comply with neutral and general laws that burden their religious practices, but is not constitutionally required to do so. *Smith*, 494 U.S. at 890.

Smith and *Lukumi* have placed in question the scope and continued validity of the longstanding constitutional prohibition on judicial interpretation of religious doctrine. In their wake, courts have assumed that once a law is determined to be religiously neutral and generally applicable, they may automatically apply the law to resolve a church property or other dispute among members of a religious congregation as a neutral principle of law under *Jones*.[13]

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[13] *See, e.g.*, *United States v. Hsia*, 24 F. Supp. 2d 33, 45-46 (D.D.C. 1998) (in response to claim that government violated defendant's free exercise rights by indicting her based on a misinterpretation of Buddhist beliefs and practices, government asserted that *Smith* "alters the analysis of [defendant]'s claim because the Supreme Court in *Smith* held that in most circumstances, the right of free exercise is not a defense against the application of an otherwise valid and neutral law of general applicability"); *Sanders v. Baucum*, 929 F. Supp. 1028, 1034 (N.D. Tex. 1996) (holding that laws found to be religiously neutral and generally applicable within the meaning of *Smith* and *Lukumi* "can be applied to resolve even internal disputes within a church without offending the First Amendment"); *Smith v. O'Connell*, 986 F. Supp. 73, 79-80 (D.R.I. 1997) (implicitly equating "neutral laws of general application" with the "neutral-principles approach"

B. *"Neutral Principles" in* Jones *Is Not Synonymous with "Religiously Neutral, Generally Applicable" Law in* Smith.

Contrary to the assumptions of these courts, "religiously neutral, generally applicable" law in *Smith* and *Lukumi* is not synonymous with "neutral principles" in *Jones*. *Smith* and *Lukumi* make clear this Court's understanding that a neutral law is one that does not target religion or religious practice, *Lakumi,* 508 U.S. at 543; *Smith*, 494 U.S. at 878, and a general law is one that applies "across the board," *id.* at 884, not being so riddled with exceptions that they swallow the rule, *Lukumi*, 508 U.S. at 543. Adjudication by "neutral principles of law," by contrast, means that the court is able fairly to adjudicate a church property dispute without interpreting or otherwise ruling on religious doctrine. *Jones*, 443 U.S. at 603-04. It is not the case that a neutral and general law always supplies the basis for adjudication of a dispute on the basis of neutral principles; equitable principles, for

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of *Jones*); *Morris v. Midway Southern Bapt. Ch.*, 203 B.R. 468, 475 (Bankr. D. Kan. 1996) (finding that statute providing for avoidance of debtor preferences is "a valid and neutral law of general application" whose application to debtor tithes thus rests on "neutral principles of law" which did not entangle the court in religious questions). *Prince v. Firman*, 584 A.2d 8, 12-13 (D.C. App. 1990) (holding that because the statute at issue is constitutional under *Smith*, its enforcement against a religious defendant does not "impermissibly entangle the court in matters of religious governance," and requires only that it "apply a neutral property rule" that does not involve interpretation of doctrine."). *See generally EEOC v. Catholic Univ. of Am.*, 83 F.2d 455, 351 (D.C. Cir. 1996):

> We acknowledge that *Kedroff* and the other Supreme Court cases that we and other courts have cited in support of the ministerial exemption [from Title VII] did not involve neutral statutes of general application. Nevertheless, we cannot believe that the Supreme Court in *Smith* intended to qualify this century-old affirmation of a church's sovereignty over its own affairs.

example, are religiously neutral and may often be generally applicable, yet, as petitioners have explained, this Court has never held that they are neutral principles within the meaning of *Jones*.

III. THE ESTABLISHMENT CLAUSE MANDATES THAT COURTS REFRAIN FROM APPLYING RELIGIOUSLY NEUTRAL, GENERALLY APPLICABLE LAWS TO RESOLVE CHURCH PROPERTY DISPUTES WHEN REFRAINING WILL REDUCE OR ELIMINATE EXCESSIVE CHURCH-STATE ENTANGLEMENTS THAT INHIBIT RELIGOIUS BELIEF OR PRACTICE.

A. *Government Actions Taken to Reduce Excessive Entanglements Between Church and State Do Not Have the Primary Effect of Advancing Religion Even When Such Actions Relieve Religious Organizations from the Obligation of Complying with a Neutral and General Law.*

This Court held in *Walz v. Tax Commission*, 397 U.S. 664 (1970), that property tax exemptions for churches and other religious institutions do not violate the establishment clause. After determining that religious property tax exemptions are not aimed at "establishing, sponsoring, or supporting religion," *id.* at 672-74, this Court inquired whether such exemptions create an "excessive government entanglement with religion" and held that they do not, reasoning that exemption of church property from taxes gives rise to less involvement of church and state than would taxation, by elminating "tax valuation of church property, tax liens, tax foreclosures, and the direct confrontations and conflicts that follow in the train of those legal processes." 397 U.S. at 674. By holding that property tax exemptions do not violate the establishment

clause, this Court determined that such exemptions are constitutionally permissible because they do not advance religion; it did not hold that such exemptions are constitutionally required, although it suggested in dicta that there might be circumstances in which the "excessive entanglement" analysis would require exemption.[14]

B. *Government Is Constitutionally Required Not to Apply Neutral and General Remedies to Religious Organizations When Application of Such Remedies to Such Organizations Would Be an Excessive Entanglement of Church and State Having the Primary Effect of Inhibiting Religious Belief and Practice.*

This Court held in *Agostini v. Felton*, 521 U.S. __, 117 S.Ct. 1997 (1997), that nonpervasive monitoring designed to verify that public school teachers present on religious school campuses do not teach religion does not constitute an excessive entanglement of the state with religion. *Id.* at 2016. *Agostini* concluded that entanglement should not be viewed as an independent test of constitutionality under the establishment clause, but as an aspect of the inquiry into a law's effect. *Id.* at 2015.

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[14] *See* 397 U.S. at 674 (emphasis added):

> We find it unnecessary to justify the tax exemption on the social welfare services or "good works" that some churches perform for parishioners and others .... To give emphasis to so variable an aspect of the work of religious bodies would introduce an element of governmental evaluation and standards as to the worth of particular social welfare programs, thus producing a kind of continuing day-to-day relationship which the policy of neutrality seeks to minimize. Hence, *the use of a social welfare yardstick as a significant element to qualify for tax exemption could conceivably rise to confrontations that could escalate to constitutional dimensions.*

Walz already stands for the proposition that exemption of a religious institution from the burdens of a neutral and general law does not advance religion and is thus constitutionally permissible under the establishment clause when exemption avoids an excessive entanglement. 397 U.S. at 674; *see also Agostini*, 117 S.Ct. at 2015 (characterizing the use of entanglement analysis in *Walz* as having determined "whether an aid program has an impermissible effect of advancing religion"). *Agostini* also concluded, however, that exemption of a religious institution from the burdens of a law may be constitutionally required under the establishment clause when the law inhibits religion and thus excessively entangles church and state:

> [I]n *Lemon* itself, the entanglement that the Court found 'independently' to necessitate the program's invalidation also was found to have the effect of inhibiting religion. Thus, it is simplest to recognize why entanglement is significant and treat it—as we did in *Walz*—as an aspect of the inquiry into a statute's effect

Id.(citation omitted) (citing *Lemon*, 403 U.S. at 620 ("[W]e cannot ignore here the danger that pervasive modern governmental power will ultimately intrude on religion . . . .")).

The use of entanglement to mandate exemption of religious institutions from laws that inhibit religion, expressly approved by *Agostini*, directly contradicts the teaching of *Smith* that believers are not to be excused from complying with neutral and general laws that incidentally burden their religioius beliefs or practices.

C. *A Court Cannot Resolve an Action Against a Church or its Leaders for Mismanagement Without Becoming Entangled in Interpretation of Religious Doctrine.*

An action against the trustees of a trust for breach of fiduciary duty or other mismanagement requires that a court establish the nature and scope of the fiduciaries' responsibilities to the beneficiaries of the trust, and that the finder of fact then determine whether and to what extent the fiduciaries deviated from these responsibilities. The "nature and extent" of the trustees' duties are determined by the "terms of the trust." *See, e.g.*, RESTATEMENT (SECOND) OF TRUSTS § 164, at 341 (1959). The terms of the trust, in turn, mean "the manifestation of intention of the settlor" regarding the purpose of the trust "at the time of the creation of the trust." *Id.*, § 4 & comm. *a*, at 13; *id.*, § 164, comm. on cl. (a), ¶¶ *a* & *b*, at 341. The determination of this intention involves

> a construction of the [trust] instrument, where construction is necessary, in the light of the surrounding circumstances at the time of the execution of the instrument. The court places itself in the position of the trustor at the time of the creation of the trust, and interprets what [the trustor] has said or done in the light of his environment at that time.

Olivas v. Board of Nat'l Missions of the Presbyterian Church USA, 1 Ariz. App. 543, 547, 405 P.2d 481, 485 (1965).

In the context of a dispute involving the administration of church property previously entrusted to church leaders by the discharge of a religious duty, the nature and scope of the leaders' responsibilities with respect to the property is directly and unavoidably derived from the religious beliefs and practices that gave rise to the trust in the first place. Thus,

whether or not FLDS Church leaders have breached their fiduciary duty in administering property entrusted to them out of religious obligation can only be determined by evaluating their conduct against the religious beliefs and practices that create and define their responsbilities towards the property. If these beliefs and practices are ignored by the court in deference to the prohibition on judicial intepretation of religious doctrine, the court ends up enforcing a secular duty that bears little resemblance to the religiously charged relationship that gave rise to the trust in the first place.[15]

This conundrum is the unavoidable consequence of the Utah Supreme Court's holding that the UEP is a private rather than a charitable trust. This determination, however, did not disturb the trial court's specific factual finding that the UEP is a religious organization formed with the purpose of advancing the members of the Church "toward the United Order," and constituting "a communal effort to build up the Kingdom of God on Earth by developing a community for the adherents to occupy."[16] The trial court further found

> "that the creators of the [UEP] trust were motivated by their religious beliefs to create a trust to hold title to

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[15] *Cf., Serbian Eastern Orthodox Diocese Church v. Milivojevich*, 426 U.S. 696, 714-15 (1976):

> [I]t is the essence of religious faith that ecclesiastical decisions are reached and are to be accepted as matters of faith whether or not rational or measurable by objective criteria. Constitutional concepts of due process, involving secular notions of "fundamental fairness" or impermissible objectives, are therefore hardly relevant to such matters of ecclesiastical cognizance.

[16] The Utah Supreme Court held that the UEP did not qualify as a charitable trust because the initial settlors were identified in the trust document as beneficiaries when the trust was formed in 1942.

> property donated by adherents to their religious faith, including themselves, and to engage in business enterprises for the benefit of the followers of the Work."

351 Utah Adv. Rep. at 10 (quoting trial court decision). The trial court also found that the UEP was a religious institution and that management of the trust by religious leaders was an important component of religious practice:

> The Work's leaders often preached that the purpose of the UEP was to advance the group toward the United Order, which was a an economic concept taught in the scriptures held sacred by The Work. To accomplish this goal the UEP was intended to provide a means for all real property of the religious group to be held in common and for its use to be managed by a benevolent and inspired group of God fearing leaders.

By holding that the UEP is a private trust, notwithstanding the UEP's obvious, explicit, and undeniable religious mission, the Utah court consciously conferred standing on dissenting members to assert claims for mismangagment of trust assets against the FLDS Church leaders who serve as trustees, including actions for breach of fiduciary duty, an accounting, and improper distribution of trust assets. *See* 351 Utah Adv. Rep. at 10 ("[t]he claimants make this assertion [that the UEP is a private trust] because the trial court's conclusion that the UEP trust is charitable denied claimants standing to assert their breach of fiduciary duty, accounting, and distribution claims.") (citing RESTATEMENT OF RESTITUTION § 391). Adjudication of these claims will necessarily require judicial inquiry into the merits of the Church's religious beliefs and practices; because FLDS Church leaders administered the UEP according to the church's religious beliefs and practices, claims that they violated their respec-

tive fiduciary duties with respect to any particular disposition of UEP property will necessarily require that a court evaluate the reasonableness, fairness, or other merit of the religious beliefs and practices of the Church that will inevitably be offered in justification of the disposition.

CONCLUSION

For the foregoing reasons, petitioners respectfully request that this Court issue a writ of certiorari to the Utah Supreme Court to consider the questions raised in this petition.

Respectfully submitted,

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February 16, 1999

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APPENDICES

APPENDIX A

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT IN AND FOR WASHINGTON COUNTY, STATE OF UTAH

RULON T. JEFFS, trustee for the United Effort Plan, a Utah trust, and KENNETH STEED, Plaintiffs,
vs.
CORA FISCHER STUBBS and DAVID L. STUBBS, Defendants.

MEMORANDUM DECISION AND ORDER

CASE NOS. 89-2850
930500305 QT

These consolidated cases came before the Court for trial on the following dates: November 30, 1994; December 1, 2, 5, 6, 8, 12, 13, 14, 19, 20, 21, 22, 23, 1994; May 17, 18, 19, 24, 25, and 26, 1995. The parties were represented by their respective counsel of record, Reid W. Lambert representing the 21 plaintiffs in the Amended Complaint filed February 16, 1994, (Plaintiff Boyd Dockstader having been dismissed by stipulation and with prejudice prior to the commencement of the trial) and the defendants in the two consolidated cases (hereinafter referred to collectively as the claimants); Raymond Scott Berry representing the United Effort Plan Trust; and Reed L. Martineau and Rodney R. Parker representing Rulon T. Jeffs, Fred M. Jessop, LeRoy S. Jeffs, Parley J. Harker, James K. Zitting, Winston K. Blackmore, and Truman I. Barlow, Trustees of the UEP Trust. The presentation of evidence was concluded on May 26, 1995, and the parties sought, and were given, time to submit

memoranda prior to closing argument. The parties submitted their memoranda and the matter came before the Court on November 13, 1995, for closing argument. The Court took the matter under submission and now enters the following memorandum decision and order.

GENERAL FINDINGS OF FACT

This case presents complex issues of fact and law. The Court has heard dozens of witnesses and has received over 100 exhibits. After a thorough review of the evidence the Court finds the following facts have been established.

Plaintiffs and defendants herein generally all contend that in approximately 1836, John Taylor, then President of the Church of Jesus Christ of Latter-Day Saints, directed several of his followers to continue the practice of polygamy outside that Church. The movement that resulted has been called The Priesthood Work (hereinafter The Work), and the adherents to that movement have continued the practice of plural marriage within their own religious organization to the present day.

As may be expected, the adherents to The Work claim to have suffered legal prosecution and illegal persecution because of their beliefs over many years. Sometime in the early part of this century the leadership of The Work determined to locate its membership in an isolated area where they could practice their religion without interference from those outside their faith. The Work's leaders taught, and the adherents believed, that the chosen area would become holy ground intended for the use and protection of the faithful. There was even a widely publicized report of a vision received by Joseph Musser in which he was told by God that

the unfaithful residents would become discouraged and leave, implying that only the faithful would reside in the community.

At some point, probably in the 1930's, the area now known as Short Creek, composed of Hildale, Utah and Colorado City, Arizona, was selected for that purpose. Those in charge of The Work set out to obtain land for the development of a city for the adherents to their faith to occupy.

The Work was directed by a group of religious leaders called the Priesthood Council during most of the history relevant to this case. The number of members of that Council varied from time to time. Under the direction of the Council a large tract of land was secured and those faithful to The Work began to migrate to the area to settle.

A common way for The Work to obtain land to occupy was to have its followers and sympathizers buy land and then deed it to The Work. To hold title to the land as it began to accumulate, the leadership of The Work formed a trust which was the predecessor to the current United Effort Plan Trust. The predecessor trust eventually failed and the land was deeded back those who had contributed it, for the most part. Finally, in 1942, the 5 members of the then existing Priesthood Council signed, and later caused to be recorded in Mohave County, Arizona, a Declaration of Trust of the United Effort Plan, the trust in question in this law suit (hereinafter UEP).

After the UEP was formed, most of the land held by the predecessor trust was deeded to the UEP. As other land was made available by the adherents to The Work, it was also

deeded to the UEP. The UEP currently holds legal title to much of the land around the Short Creek area, including the lands occupied by the claimants in these cases. Taxes on the UEP held land are paid by assessment of the persons occupying the land and other faithful members of The Work, if necessary. Tax money would be solicited as a donation and collected by religious leaders. No penalty was imposed on the land users who could not pay the taxes assessed to them. The shortfall would be made up by The Work, even using other donation money if necessary. The plaintiffs herein participated in this tax arrangement to one degree or, another.

In the early days of the UEP, it also owned various cooperative enterprises in the community and engaged in business activities which were formed to serve the adherents of The Work living in the remote area, such as stores, a gas station, dairy and other operations. In the 1940's many of these enterprises failed and the trust closed its accounts and determined that it would limit its functions to holding title to the land in the area. Such has been the case since the 1940's.

Also in the early days of the UEP there was an effort by the religious leaders to provide food and other necessities to the faithful. In 1953 The Work's policy in that area changed and the adherents were encouraged to be independent and to "begin paddling their own canoes" to quote Fred Jessop. From the beginning of the operation of the UEP, it was apparently the practice of the trustees, who were also the religious leaders of The Work, to invite certain of the adherents to build their homes on the land owned by the UEP. The adherents were aware that they were building on land to which they did not hold title. No deeds were issued and no written agreements were formalized spelling out the

terms for the use of the land. The use of the land was conditioned upon religious teachings and beliefs commonly held and widely known in the community.

The Work's leaders often preached that the purpose of the UEP was to advance the group toward the United Order, which was a an economic concept taught in the scriptures held sacred by The Work. To accomplish this goal the UEP was intended to provide a means for all real property of the religious group to be held in common and for its use to be managed by a benevolent and inspired group of God fearing leaders. Accordingly, it was not unusual for those occupying UEP lands or houses to be asked to move so those more needy or more deserving in the eyes of the trustees, or their agents, could take over the premises. Generally such requests were complied with willingly by the adherents to The Work. Some adherents of The Work built homes only to see the UEP move another family into the partially or fully completed structure. These occurrences were common knowledge in the community.

Another purpose of the UEP, as taught by leaders of The Work, was to protect the adherents from legal suits by enemies of The Work. The adherents were told that having a home on UEP land was better than having a deed because it couldn't be foreclosed for the adherent's debt. For the same reason, the adherents were frequently told that they were not free to mortgage or sell the land they occupied and that if they ever determined to leave the land, for any reason, the land and all improvements would belong to the UEP.

The leadership of the Work also taught that the UEP constituted a communal effort to build up the Kingdom of God on Earth by developing a community for the adherents

to occupy. As a result, many of the adherents, as part of their religious practice, spent countless hours on volunteer projects for the community, such as setting up water and sewer systems. They often went on work missions in which they would work without compensation for the community, or they would take jobs outside the community and contribute their pay to their religious leaders. It was also common among the adherents of The Work to serve as volunteers doing construction work on the homes of the other adherents. Some were compensated for those efforts, either with money or by trade, but many were not compensated.

Some residents did become discouraged and leave the community, as life there could be hard and lonely, and their improvements became the property of the UEP. Some were invited to leave by the leaders and some of these left voluntarily while others were bought out, "prayed out" or allowed to remain. Until recent times, the trust had not resorted to legal action or force to require occupants of the land to vacate.

Most of the communications to the residents from the UEP, or the Priesthood Council about the UEP, came from the pulpit during the frequent religious services that the adherents attended. In addition, some of the claimants in this suit claim that they had private conversations with representatives of the UEP in which they received additional representations about their right to use the UEP land. These communications will be discussed later in this opinion. All of the claimants have built improvements upon land to which title is held by the UEP.

Although the verbal arrangements for the use of UEP land were usually made with members of the religious

leadership, who were also UEP trustees, or their agents such as J. Marion Hammon or Edson Jessop, the evidence clearly indicates that the provisions of the UEP Declaration and the amendments thereto were roundly ignored by everyone in the process.

A copy of the Declaration and amendments is appended hereto and incorporated by this reference as Exhibit A. The Declaration is clear in some particulars and ambiguous in others. Having heard the evidence presented by the parties as to the intention of the subscribers or settlers, the Court is now prepared to assign meaning to the Declaration provisions. *(See* 76 Am. Jur. 2d *Trusts,* Sec. 35, p. 62.)

The structure of the UEP is somewhat unusual. It has subscribers who created the trust who are also the initial members and the trustees of the trust and some of its potential beneficiaries. In addition there is provision for others to become "members" of the trust (See Article XII) and also for others to become potential beneficiaries (See 1946 Amendment and Article XII, paragraph 3). Under the terms of the declaration the distribution of benefits from the trust is entirely discretionary with the Board of Trustees who are to administer equitable and beneficial interests from the trust according to the "just wants and needs" of the members and beneficiaries and in accord with the trust's ability to respond to those wants and needs. (See Declaration, page 1, 2nd paragraph.)

The Declaration clearly provides that the trust is to take action only through the trustees acting together (See Articles II and III) except for the specific duties delegated to the President (See 1946 Amendment). The trustees and their successors were to hold title to all property in the trust estate

and to exercise exclusive management over it under the terms of the trust. (See Article V.) The Board of Trustees was to select additional trustees and could increase or diminish the number of trustees. (See Article VII.)

In the declaration the trust is specifically designated as a charitable and philanthropic trust to be operated in the spirit of brotherhood, and is empowered to engage in legitimate business enterprises to further its objectives. (See Article VIII.) The declaration designates no specific beneficiaries, but only shifting, potential beneficiaries, whose identity is to be determined in the future, depending upon the discretionary decisions of the trustees. The members of the trust have no entitlement to benefits since the trustees have discretion to distribute benefits to members or non-members alike as the trustees see fit. The Court finds that the trust is a classic charitable trust established with the intention to serve those in need of help through charitable and philanthropic activities, regardless of whether they are members of the trust or not. Additional members may be added to the UEP by it consecration of such property, real, personal or mixed, to the trust in such amounts as shall be deemed sufficient by the Board of Trustees... " and members can be expelled by vote of the Trustees. (See Article XII, last paragraph). The members buy nothing by their contributions to the corpus of the trust, as the members and other potential beneficiaries have no right to claim any benefit unless the trustees declare it (See Articles XIV and XV). Those seeking benefits from the trust do so as suppliants, not as a matter of right. The Trust is to terminate no later than 100 years from 1946 and the corpus, if any, distributed to the then current membership. The UEP was declared a non-profit organization in the 1946 Amendment to the declaration.

The plaintiffs in this case have argued that the trust was actually a common law business trust or a Massachusetts business trust. The Court is persuaded that the trust was intended as a charitable trust, even though there is evidence to the contrary and even though the trust itself has demonstrated confusion on this point by variously referring to itself as a common law trust and a charitable trust over its history. Plaintiffs make the following points in support of their view:

1. The Declaration authorizes the trust to engage in business; 2. the members are entitled to equitable and beneficial interests in the profits and property of the trust; 3. the liability of the members is limited, implying some entitlement; 4. there is reference to membership certificates; 5. the trust is to endure "for such time as the business proves to be advantageous"; and 6. the trust states that its creators meant to create a trust, not a partnership.

The Court finds as follows regarding the factual assertions contained in those points: 1. This statement is true. 2. This statement is incorrect. The members' interests in the trust are subject to the discretion of the trustees who are to distribute benefits based on the just wants and needs of the beneficiaries and members (See 2nd paragraph of the first page of the Declaration, Article XIV, and the 1946 Amendment). 3. The first part of the statement is true, the implication stated is not. 4. This is true. 5. The original declaration contains that language but it was amended out in 1946. 6. This statement is true.

The mere mention of matters normally related to a business enterprise is not the determining factor in deciding the nature of the trust. The Court is aware of no legal

authority prohibiting a charitable trust from engaging in the activities set out above. The primary focus of the inquiry must be to ascertain the intent of the settlers and to give full effect to that intent, so long as it is not contrary to law or public policy. (*See* 76 Am. Jur. 2d, Section 35, p. 62) The Court has found, based on the evidence presented at trial and the clear language of the unambiguous portions of the declaration, that the creators of the trust were motivated by their religious beliefs to create a trust to hold title to the property donated by adherents to their religious faith, including themselves, and to engage in business enterprises for the benefit of the followers of The Work. The property was intended to be used to benefit those that the trustees chose as beneficiaries in the future according to the "just wants and needs" of the beneficiaries at the time benefits were being considered. At the time the trust was created, and at all times thereafter, the identity of the beneficiaries was unknown until the trustees designated beneficiaries. The trustees were free to confer benefits upon trust members and non-members alike and to do so only restricted by consideration of whether the wants and needs of the beneficiary were just in the view of the trustees. In the process the trustees were free to distribute all the holdings of the trust. In the event that they chose to do so, there would be nothing to be divided among the trust members at the time the trust terminated.

Although the declaration provides for the business of the trust to be conducted by the trustees as a group, the evidence shows that the presiding religious officer of The Work was allowed to make the decisions for the trust, often without consulting with the other trustees. The trust kept few records. Membership lists were not maintained. Certificates of membership where issued rarely and sporadically. The

trustees did not meet to create new members or to determine who should become beneficiaries of the trust. The UEP was often referred to in religious discussion but the formalities of the administration of the trust were ignored, as was the actual language of the trust. In fact many within The Work felt it would be an indication of a lack of faith if the declaration of trust were to be obtained and examined.

The claimants all claim to be members of the UEP. The Court finds that the evidence does not support that position. No evidence was introduced by any claimant to show that he was made a member of the UEP by vote of the Board of Trustees after they had determined that a sufficient consecration had been made. The parties generally assumed that they were members of the UEP automatically because they were adherents to The Work, or because they were allowed to live on UEP land, or because someone told them they were a member, or for some other reason. No action by the Board of Trustees was demonstrated granting membership to any of the claimants in this case. The Court finds that none of the claimants are members of the UEP. However, that does not mean that they are not beneficiaries of the UEP since all are receiving the benefit of being allowed to use and occupy UEP land. The terms "member" and "beneficiary" are not interchangeable in the UEP Declaration. Each claimant has constructed substantial improvements on UEP land since being allowed to enter into possession and use of the property.

In approximately the late 1960's or early 1970's there arose some dissention among the adherents to The Work. The priesthood council then in place was apparently split by a doctrinal question. The situation festered until the death of President Leroy S. Johnson. At that time the dispute

surfaced and in approximately 1984 the adherents to The Work split into two camps. One, under the direction of President Rulon T. Jeffs, holds control of the UEP and has since formalized and organized the Fundamentalist Church of Jesus Christ of Latter-Day Saints (hereinafter referred to as the First Ward). The other, initially under the direction of J. Marion Hammon and Alma Timpson, is the camp to which the claimants belong, for the most part, although some claimants now assert no affiliation with either group. (Hereinafter referred to as the Second Ward.)

Pres. Jeffs has appointed trustees for the UEP who are not members of the Priesthood Council. He has declared all those occupying UEP lands to be tenants at will. He has declared the claimants herein are apostates and has disassociated them from the religious organization which he heads. The 2nd Ward claims they are the true adherents to The Work. The Court has repeated held that it has no jurisdiction to resolve such a dispute.

In 1987 the claimants herein brought suit in the Federal Court to determine the rights, if any, that they may have in the UEP land which they have occupied. This action was commenced after the claimants received notification that they were considered to be tenants at will by the UEP. In 1989 suit was also filed in Washington County, Utah raising many of the same issues. The State case was stayed pending the resolution of the Federal case. Eventually the Federal case was dismissed for lack of subject matter jurisdiction. The stay on the State action was then lifted and this matter has proceeded in this forum. During the pendency of this original case, the UEP brought suits against the defendants Stubbs and Harker seeking relief under the unlawful detainer statutes of the State.

LEGAL ANALYSIS

For trial, the Court ordered bifurcation of the issues in the consolidated cases. The issues tried to date are those raised in the first six claims for relief in the Amended Complaint filed February 16, 1994, by 22 plaintiffs. By the time of trial Boyd Dockstader had been dismissed with prejudice as a plaintiff, leaving 21 with claims pending. The six causes of action tried are 1. Breach of Contract; 2. Implied Contract; 3. Negligent Misrepresentation; 4. Constructive Fraud; 5. Estoppel; and 6. Unjust Enrichment/Occupying Claimants. The elements of these claims are as follows:

Express Contract

To establish the existence of an enforceable express contract, there must be proven, by a preponderance of the evidence, an offer with present contractual intent or mutual assent, and acceptance of that offer by the other party, supported by consideration. In this case the claimants assert, among other things, that they were promised an interest in real property belonging to the UEP, which raises issues of the Statute of Frauds. The law is clear in Utah that part performance of an oral agreement will satisfy the Statute of Frauds, but only if the existence of an oral contract and its terms are clear and definite, the acts done in performance are clear and definite and those acts are in reliance upon and strictly referable to the contract and not readily explainable on any other ground. [*See Martin v. Scholl*, 678 P.2d 274 (1983).]

Implied Contract

An implied contract is based upon the same elements as an express oral contract, except that the contract and its terms are inferred from conduct, rather that expressed in words. The burden of proof is the same.

Negligent Misrepresentation

The elements of this cause of action have varying formulations which seem to contain the same legal principles. One such is, a "party injured by reasonable reliance upon a second party's careless or negligent misrepresentation of a material fact may recover damages resulting from that injury when the second party had a pecuniary interest in the transaction, was in a superior position to know the material facts, and should have reasonably foreseen that the injured party was likely to rely upon the fact". [*See Price-Orem Investment Company v. Rollins, et. al.*, 713 P.2d 55 (1986) and *Maack v. Resource Design & Const.,Inc.*, 875 P.2d 570 (1994).]

Another definition, cited by the plaintiffs herein, is, "one who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by the justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information." [*See Atkinson v. IHC Hospitals, Inc.*, 798 P.2d 733 (1990)]

The elements of this claim must be proven by clear and convincing evidence. [*See Pace v. Parrish*, 247 P.2d 273

(1952); and *Jardine v. Brunswick Corp.*, 423 P.2d 659 (1967)].

Constructive Fraud

A claim for constructive fraud arises out of a confidential relationship between the parties such that one party, having gained the trust and confidence of the other, exercises extraordinary influence over the other and in so doing fails to make full and truthful disclosure of all material facts in connection with any transaction in which the other party could be expected to rely upon the information provided with resulting injury to the other party from the transaction.

The existence of a confidential relationship must be proven by clear and convincing evidence. [*See Bradbury v. Rasmussen*, 401 P.2d 710, 715 (1965)]

Estoppel

"Elements essential to invoke the doctrine of equitable estoppel are: (1) an admission, statement, or act inconsistent with the claim afterwards asserted, (2) action by the other party on the faith of such admission, statement, or act, and, (3) injury to such other party resulting from allowing the first party to contradict or repudiate such admission, statement, or act." [*See Celebrity Club, Inc. v. Utah Liquor Control*, 602 P.2d 689 (1979).] Estoppel can also arise from silence when one ought to speak and in failing to do so induces another to believe certain facts exist. [*See Leaver v. Grose*, 610 P.2d 1262 (1980).] The burden of proof is preponderance of the evidence.

Unjust Enrichment/Occupying Claimant

Unjust enrichment has the following elements: (1) enrichment of one party; (2) an appreciation or knowledge of the benefit by the enriched party and (3) the acceptance or retention by the enriched party of the benefit under such circumstances as to make it inequitable for the enriched party to retain the benefit without payment of its value. [*See Berrett v. Stevens*, 690 P.2d 553 (1984).] The burden of proof is preponderance of the evidence.

The parties apparently agree that the law in the State of Arizona is in agreement with that in the State of Utah as to those claims discussed above. They likewise agree that Arizona has no counterpart for the Utah Statute on occupying claimants, 57-6-1 et. seq., UCA. Therefore the claims under the occupying claimant statute would apply only to those claimants occupying land in the State of Utah.

APPLICATION OF LAW TO VARIOUS PLAINTIFFS

The Court will decide the issues presented as to each plaintiff in the order in which the plaintiffs appear in the Amended Complaint.

Cyril Bradshaw

Mr. Bradshaw became associated with The Work in 1953. He was highly educated, holding a Ph.D, and had experience in real estate matters. At time of trial he testified that he is also a master electrician. Bradshaw moved to Short Creek in 1960. He was invited to move to the area from Northern Utah after becoming affiliated with The Work. He agreed to do so. He had a home in Northern Utah which he donated to

The Work prior to moving to Short Creek. He was to be the teacher at the Colorado City Academy, a high school level institution which operated in Colorado City for 20 plus years under his direction.

Bradshaw had seen the Declaration for the UEP in the 1950's but claims he did not actually read it until about 1984. He knew it was recorded and could be obtained but he did not take action to read the Declaration because it just didn't seem important. He claims that he was told by J. Marion Hammon when he moved to the area that he was a member of the UEP. He presented no evidence that the trustees had taken the action required under the provisions of the Declaration to make him a member.

Bradshaw was assigned the use of a small house while he taught school at extremely low wages for about the first 8 years. Finally J. Marion Hammon assigned him a UEP lot upon which to build a home. Bradshaw could not remember the exact words used in the conversation but did recall the use of the word "forever."

He knew that he could not mortgage, sell or leave the lot. He knew he had no ownership of the lot. He had been told from the beginning that the UEP was to be operated for charitable and benevolent purposes. He assumed that his use of the lot was secure because of his membership in the UEP. He freely admitted that he moved to Short Creek out of religious motivation.

After he was assigned a lot to use, Bradshaw spent money and labor constructing a large home where he raised his family. He was assisted in constructing the home by others in the community who worked on his home and contributed

materials. Many of these helpers were uncompensated volunteers associated with The Work and the UEP. He was never told that his right to use the UEP lot could be terminated by the trustees and he never asked about his status. He did pay tax assessments made by Truman Barlow to help pay for the property taxes levied against UEP lands by the counties.

On cross examination Bradshaw testified that he has a selective memory that allows him to remember facts without remembering where he learned them. He has difficulty remembering dates and some details. He admitted that he joined with The Work after undergoing a "personal conversion". He began attending religious meetings in Salt Lake where he heard requests for help in Colorado City. Even before he moved to Short Creek he often came down on weekends to help build up the community and donated money for the projects underway there.

Bradshaw admitted that he often heard J. Marion Hammon speak in religious meetings about the UEP but he ignored the speeches because he "already had that tapestry woven."

Breach of Contract Claims

Bradshaw is one of the ten plaintiffs who have asserted contract claims. He alleges that conversations between him and J. Marion Hammon in 1960, when he moved to Colorado City, and again in 1969, when he was assigned the use of a lot to build on, constituted an offer that he could build on a lot owned by the UEP and use it "forever". He claims that he accepted that offer and that his construction of a home on that lot constitutes part performance sufficient to remove the

oral agreement from the operation of the Statute of Frauds. The burden of evidence is, of course, upon the claimant to establish his claims by the applicable evidentiary standard.

The Court finds that Bradshaw has failed to demonstrate the existence of an express oral contract, even taking his testimony at face value. The Court is concerned about the deficiencies in Mr. Bradshaw's memory and cannot accord his unsupported assertions full credibility. Setting side those concerns, however, the Court finds that the alleged conversations with the now deceased J. Marion Hammon fail to prove that the UEP was offering Bradshaw perpetual and ever lasting use of the lot upon which he was allowed to build his house. In fact Bradshaw remembers very little of the conversation. To establish an oral contract, one must present definite evidence of its terms and existence. No such evidence was contained in the testimony of Bradshaw. In fact, his testimony establishes, beyond question, that he went to Short Creek, taught school, engaged in various commendable religious works and activities, taught school for an very low wage and built a house on a UEP lot because of the depth of his religious convictions, not because he had been promised life long, or perpetual, use of the property.

In addition, the construction of the home on UEP land does not avoid the application of the Statute of Frauds, as the alleged part performance is not exclusively attributable and referable to the oral contract, even if one had been established. An equally plausible reason for the construction of the house was Mr. Bradshaw's admitted motivation to build up the Kingdom of God in Short Creek, as everyone else in the area was doing.

Likewise, and for the same reasons, the Court finds that the implied contract claim of Mr. Bradshaw has not been proven. Nothing in the actions of the parties demonstrates a tacit agreement that the plaintiff would have anything other than the temporary use of the UEP lot until the Trustees determined that the benefit would be withdrawn. A contract does not arise from the unsubstantiated assumptions of one of the parties.

In the Amended Complaint, under the First Claim for Relief, the ten listed plaintiffs allege other contract claims. They first assert that they became members or beneficiaries of the UEP by contributing valuable property to the UEP as required by the Board of Trustees. As stated above under the General Finding of Fact, the evidence does not support that assertion. There was no proof that any of the plaintiffs was ever approved as a member of the trust by action of the Board of Trustees or that the trustees ever determined that any contributions made by the plaintiffs were sufficient for membership. None of the plaintiffs can claim a contract based on membership in the trust. Since plaintiffs were never members of the UEP they cannot claim that they entered into the agreements listed in paragraph 16 (a), (b), and (c) of the Amended Complaint.

The plaintiffs also claim that they were beneficiaries of the UEP and they entered into contracts with the trust based on that status. The Court finds that the evidence does not support that claim as to any of the plaintiffs, as will be discussed hereafter.

The Court finds that the contract claims of Plaintiff Cyril Bradshaw have not been proven by a preponderance of the evidence.

Negligent Misrepresentation

Mr. Bradshaw is also one of the plaintiffs named in the Third Claim For Relief of the Amended Complaint. In that claim it is asserted that in connection with contributions made by the plaintiffs to the UEP, agents of the UEP made certain oral representations of material fact, specifically:

1. that the principal purpose of the UEP was to provide security for its beneficiaries by protecting their property and enterprises from loss for any reason, including bankruptcy, foreclosure or legal actions by enemies from without the movement,

2. that each plaintiff would be a co-owner of the enterprises of the community and would thus share in the prosperity of those enterprises,

3. that each plaintiff would be secure in his home on his assigned building lot and could only lose that home if he chose to abandon it,

4. that the UEP would provide long-term security to the beneficiaries and would provide for them according to their needs.

None of the plaintiffs has presented evidence sufficient to prove this claim. The Court has found that one of the purposes of the UEP, as taught by the trustees in their religious gatherings, was to protect those on UEP land from losing the land to enemies of The Work. No such loss has been proven by any plaintiff.

On the other hand, the evidence does not support the allegation that anyone promised any one of the plaintiffs that he would be a part owner of any enterprise or share in any profits from the trust. No plaintiff claimed that and the vast weight of the evidence is contrary to that assertion.

In fact Mr. Bradshaw did not even think the UEP important until some 24 years after he moved to Short Creek and until the religious dispute had arisen and he realized he was among those no longer in control of the UEP. He never read the Declaration of the UEP, even though he knew it existed. He ignored speeches about it. He assumed that the UEP owned certain business enterprises in the community, but had no authoritative evidence of that. He never made any contributions to the UEP but did to his religion and its leaders. His testimony simply does not support this claim.

The evidence does not support the claim that the plaintiffs were told that they would be secure in their homes and could only lose them by abandoning them. No such representation was made to any plaintiff. Mr. Bradshaw recalled no such representation as his only recollection was that J. Marion Hammon used the word "forever" when he assigned the use of the UEP lot, but Bradshaw could not remember what else was said. The Utah Supreme Court has not included due diligence as an element of this cause of action but has required the analogous element of reasonable reliance. [*See Macck v. Resource Design & Construction, Inc.*, 875 P.2d 239 (1994).] The plaintiffs herein, including Mr. Bradshaw, could not have reasonably relied on the off hand, and abbreviated comments to which they point to create a right of ownership or perpetual use in view of all they knew about the operations of the UEP. The evidence does not support this claim.

Likewise the evidence presented does not support the claim that any plaintiff was told that he would be provided long-term security by the UEP according to his needs. Mr. Bradshaw testified that he was promised, as part of his employment as a school teacher, a place to live, a low wage, and medical care, all of which he received. There was no persuasive evidence of any representation that his long-term security would be met by the UEP.

In paragraph 31 of the Amended Complaint, Bradshaw claims that the UEP omitted to disclose material facts to avoid misleading him.

(a) Mr. Bradshaw was well aware that the UEP was governed by a Declaration recorded on the public records and had been prior to his association with The Work. He chose not to read it, even knowing that it might relate to his right, or privilege, of occupying a UEP lot. If he was mislead by lack of the information in the Declaration, he was as much at fault as the UEP.

(b) Mr. Bradshaw was not specifically told that he would be a tenant at will on the UEP lot until he had already constructed improvements on the lot, nor did he ask. He was apparently satisfied that his "just wants and needs" would be met by his religious leaders and chose not to ask about the terms of his use of the land provided by the UEP. One who seeks relief because of injury from misrepresentations of another cannot simply believe whatever is said. Such a person has a duty to exercise the degree of care to protect his own interests as would be exercised by any reasonable and prudent person under like circumstances. [*See Jardine v. Brunswick*, 423 P.2d

659, 662 (Utah 1967)]. To rely on one word in a conversation in a matter of this import is not reasonable.

(c) The Court is persuaded that Mr. Bradshaw and the other plaintiffs herein were aware, because of the purpose and nature of the movement they were with, that the Short Creek area was being developed as a refuge for the faithful adherents to The Work. Each plaintiff was invited to help build up the community and to practice his own religious beliefs there because he was in harmony with others living there.

If Mr. Bradshaw had read the Declaration which he knew was recorded in Mojave County, he would have learned that even if he was a member of the UEP, he could be expelled and loose all claim on the trust by a majority vote of the trustees for actions prejudicial to the trust, and that as a non-member beneficiary, he could be deprived of benefits conferred by the Trust in the event that the Trustees deemed it unwise to confer the benefit. Mr. Bradshaw cannot now claim misrepresentation because he didn't understand that if he fell out of harmony with the trustees of the trust his right to use trust land could be terminated. Such knowledge was widely available in the community to anyone who inquired.

(d) Mr. Bradshaw never testified that he made contributions to the UEP or its enterprises to gain an interest therein, nor did the other plaintiffs. The inference from their statements was that they considered their contributions to be religious donations to The Work, although the UEP may have benefited.

Mr. Bradshaw's motivation for his labor and money was to comply with the requests of his religious leaders, regardless of the ownership of the project. He never claimed in his testimony that he was mislead by the failure of the UEP to tell him that the trust did not own the projects he worked on. It simply was not a matter of concern to him when the contributions were made as they were religious contributions.

(e) The accountability of the trustees to the beneficiaries is spelled out in the Declaration of which Bradshaw was aware. In addition, no evidence at all was presented on this point during the trial by any plaintiff. No one testified that he or she was mislead by the lack of this information.

The Amended Complaint seems to state that the plaintiffs are seeking reimbursement for all the contributions ever made to the UEP. If so, the evidence is completely lacking in this particular. The evidence presented on contributions was not sufficient to allow the court to determine the contributions made to the UEP, as opposed to The Work. No accounting was presented by any plaintiff. There was no persuasive evidence of any amount of damage claimed.

Nothing in the evidence presented demonstrated that Bradshaw made contributions to the UEP, with the possible exception of the house he built. He stated no claim for damages other than for the house. The Court finds that he has failed to prove his claim for reimbursement for other contributions to the UEP. Likewise, the Court finds that Mr. Bradshaw was not mislead by the representations made, or the omissions claimed. He knew that he could obtain all the information available to J. Marion Hammon by asking, or by

reading the UEP Declaration. He was not in an inferior position to the trust in regard to the extent of his right to use UEP land. In addition, it was not reasonable for an educated man, experienced in real estate transactions, to assume, without investigation or inquiry, that he could build a home on the land of a trust and expect to keep the land "forever" without specific agreement as to that term.

For the reasons stated, Mr. Bradshaw's claim for negligent misrepresentation fails.

Constructive Fraud

Each plaintiff alleges that he was in a confidential and fiduciary relationship with the trustees of UEP because they were the trustees of the trust and also his religious leaders. He then alleges that the trustees had a duty to make full and truthful disclosure of all material facts and to act in his interest. He claims the trustees or the trust' breached the duty by failing to disclose the following material facts.

1. That the trust was governed by a recorded Declaration limiting the plaintiffs' right of use of UEP land.

Mr. Bradshaw's testimony, and the other evidence in the case, does not support this claim. He testified that he knew of the existence of the Declaration and that it was recorded long before he began constructing improvements on UEP land.

2. That Mr. Bradshaw would be a tenant at will on UEP land and could be removed at the will and pleasure of the trustees.

It is true that Mr. Bradshaw testified that no direct communication of this fact was made to him before the tenant at will letter in 1984. However, Mr. Bradshaw was an educated man with prior experience in real estate matters, which should have made him curious about the rights of one who builds on another's property without an agreement as to the term of the tenancy. Mr. Bradshaw did not even inquire as the terms when he was assigned a lot nor did he seek out the Declaration to clarify the situation before beginning construction. The evidence does not demonstrate that Mr. Bradshaw's will and intelligence were overcome because of his relationship with the trustees. In fact Mr. Bradshaw testified that he turned down lots which J. Marion Hammon offered him and held out until he got one he liked. The Court is convinced that the reason Mr. Bradshaw built his home on UEP land was because he wanted to continue in his association with The Work. He understood fully the operations of the UEP, having discussed it with one of the subscribers to the trust before ever associating himself with The Work. He never conceived that he might find himself at odds with the UEP or some of his religious leaders and he now seeks to blame them for his own lack of foresight and judgment.

A confidential relationship is the basic prerequisite for a claim of constructive fraud. The mere fact that the trustees of the trust and the plaintiffs were members of the same religious organization does not automatically create such a relationship. [*See Thatcher v. Peterson*, 437 P.2d 213, 214 (1968).] Mr. Bradshaw made his own choices based on his own desire to be a fully participating member of The Work. He cannot now blame the trust or its trustees for allowing him the privilege it offered to many of its adherents, the use of UEP land for whatever term the trustees felt wise.

Equitable Estoppel

Mr. Bradshaw alleges that UEP should be estopped from removing him from UEP land because the UEP had taken the position that he had an interest in the corpus of the trust. The Court has already found that the evidence does not support either the claim that the plaintiffs were members of the UEP or the claim that membership created any right to the corpus of the trust.

He also claims that the UEP had taken the position that those occupying UEP land had the right to do so in perpetuity. The Court finds that the weight of the evidence is to the contrary. Mr. Bradshaw may have taken the position that he ascribes to the trust but no evidence was presented that the trust ever agreed to allow anyone to occupy property held by the UEP in perpetuity. The best Mr. Bradshaw could come up with was the word 'forever" and he could not even place that word in context. To the contrary was the vast body of evidence presented by others who live in the Short Creek community and who knew the leaders and practices of the UEP well, as well as evidence from those leaders. That evidence clearly showed that the UEP often moved people around on UEP property, asking some to move in favor of others. Some were even asked to leave the community. Some built houses, only to see others move into them. Many testified that it would have been contrary to the very purpose of the UEP to allow permanent use of a lot. J. Marion Hammon himself, by deposition testimony, denied that he ever told anyone they could use a UEP lot forever. The evidence preponderates in favor of a finding that the UEP did not promise permanent use of lands it controlled to individuals using the land. The Declaration of Trust provided that the UEP could extend benefits, or not, as its

trustees thought wise. The weight of the evidence was inconsistent with the claims of plaintiffs.

Mr. Bradshaw never testified that the UEP made representations to him about long-term security, funeral insurance, retirement, and so forth. The evidence does not support that claim as to this plaintiff or any other.

For the reason that the plaintiff has failed to prove that the UEP made statements, or took actions, or did acts inconsistent with statements, actions, or acts later taken, the estoppel claim fails as to Mr. Bradshaw.

Unjust Enrichment/Occupying Claimants

Mr. Bradshaw testified that he resides in Arizona and thus would have no protection under Utah's Occupying Claimant Statute. He does assert a claim under the theory of unjust enrichment, however. There can be no doubt from the evidence presented that Mr. Bradshaw has conferred a benefit on the UEP by improving the lot he was allowed to use by the installation of a home worth far more than the land. There can also be no doubt that the trust was aware of the benefit as its representatives encouraged the construction and the improvement of the lot by the occupant and watched the building going in. The issue is whether, given the facts in this case, it would be inequitable to allow the UEP to retain the benefit without compensation to Mr. Bradshaw. The Court is of the opinion that such a result would be inequitable.

At the time Mr. Bradshaw was assigned a lot, he was encouraged, as were many other plaintiffs, to improve the lot and to build on it. The Court is convinced that neither the

trust and its representatives nor Mr. Bradshaw ever thought about what would happen to the improvements if Mr. Bradshaw became estranged from the UEP, or The Work, but wanted to remain on the property. The prevailing thought within the community at that time was that God would take care of the disaffected by causing them to become discouraged and to leave. Mr. Bradshaw claims he built his home with the intention that he would occupy it "forever", even though the Court has found that he has failed to prove that the UEP agreed to that term. As a practical matter "forever" would necessarily be limited to his lifetime, as there was no indication, even in his version of the facts, that the use of the lot would pass to his heirs upon his death. Nonetheless, he expected to use the property into his foreseeable future. As a result he has invested lots of money and time in the improvement of the property and now, because of a religious disagreement, he faces the possibility of losing the occupancy of the home he has built. Should the UEP chose to remove him from the property he now occupies, the UEP would acquire a large home suitable for housing another of its adherents at little or no cost. The UEP must bear a large share of the blame for the confusion as to the terms of occupancy since it did not communicate to Mr. Bradshaw directly the conditions of his occupancy of the lot, even though the trust was engaged in a long term and wide spread program of settling its people on UEP lands. It would have been easy to prepare a list of the conditions of occupancy and to distribute the list to those preparing to invest heavily in improvements with the encouragement and agreement of the trust.

The Court finds that the circumstances here present would make it inequitable for Mr. Bradshaw to be forced from the home he occupies, during his lifetime, without any

compensation from the UEP for the improvement of the lot he is using. The Court finds that the UEP owns the land and the improvements thereon but imposes a constructive trust thereon in favor of Mr. Bradshaw during his lifetime. In the event that the UEP discontinues benefits to Mr. Bradshaw and discontinues his use of the property prior to his demise, he is entitled to compensation for the then current value of the improvements conferred upon the UEP, minus any contribution to the value of the improvements made by the UEP in the first place, including, but not limited to, aid in the construction or contribution of materials, if any. If Mr. Bradshaw is allowed the use of the home he constructed until his death, the improvements will then belong to the UEP without the necessity of payment therefor. Mr. Bradshaw's right of occupancy is also subject to loss without reimbursement for improvements if he tries to sell or mortgage the property or the improvements, or if he abandons the use of the lot, as those limitations were known to Mr. Bradshaw at the time he built the improvements. Mr. Bradshaw and his co-occupants, if any, shall be liable to the UEP for waste committed upon the property, beyond normal wear and tear, during this occupancy. Declaratory judgment will be entered to that effect.

Connell Bateman

Originally Mr. Bateman was a plaintiff in all six of the claims tried to date. Following the presentation of the plaintiffs' case, and on motion of the defendants, the Court dismissed all of his claims except constructive fraud and unjust enrichment. The Court will now address those remaining claims.

Mr. Bateman occupies a UEP lot in Colorado City, Arizona. He was born into a family associated with The Work. He was assigned the use of a UEP lot in 1976 and thereafter constructed a home and other improvements. He learned of the existence of a Declaration of Trust for UEP in about 1984 and read it later in that year. He was assigned a lot by Pres. Leroy S. Johnson, who was like family to him. He was made no promises about how long he could occupy the lot. He knew the lot was not his and the UEP held title. He knew that he could not sell or mortgage the lot and that if he left, the lot and all improvements would go to the UEP. When he was assigned the lot it was with the encouragement of Pres. Johnson and Edson Jessop that he would build on it and improve it. He was never told that he would be a tenant at will on the property and his right to use the property could be terminated at any time by the UEP, nor was he told that he would lose the use of the lot if he became out of harmony with the UEP or The Work.

He assumed that he was a member of the UEP from birth and claims that he was told that he was a member by Pres. Johnson at the time he was assigned a lot. He presented no evidence to indicate that the trustees ever made him a member in fact. He did show that he had been named as a beneficiary of the trust at one time.

At time of trial he was no longer affiliated with The Work and was associated with neither of the factions in the First or Second Wards in Short Creek. He assumes he has the right to use his assigned lot forever although he was never given that promise by anyone prior to construction of improvements thereon. In 1987 he spoke to President Johnson and was told he could use the lot and home as long as he

wanted but when he left he was to turn the keys over to Pres. Johnson or Edson Jessop.

Constructive Fraud

Mr. Bateman claims that he was involved in a confidential relationship with the trustees of the UEP. The evidence presented does not support that claim. Mr. Bateman's dealings with the trust were through Leroy S. Johnson, presiding officer of both the UEP and The Work. The evidence clearly indicates that Mr. Bateman had a great affection for Pres. Johnson both as "family" and as a religious leader. However, the Court is convinced that Mr. Bateman undertook to develop a lot owned by the UEP as a religious service, not because his relationship with Pres. Johnson resulted in extraordinary influence over him or because his will had been overcome by Pres. Johnson's influence. Prior to building the improvements on the lot, Mr. Bateman had participated in numerous projects to build up the Kingdom, including operating a dairy farm, and serving a work mission and donating all earnings to The Work.

The relationship between the Trust and Mr. Bateman was not a confidential or fiduciary relationship in the sense required to establish this cause of action. [See *Bradbury v. Rasmussen*, 401 P.2d 710 (1965); *Thatcher v. Peterson*, 437 P.2d 213; *Von Hake v. Thomas*, 705 P.2d 766 (1985).]

For these reasons, and those set out in discussing the Bradshaw claims, the Court finds that Mr. Bateman has failed to prove this claim.

Unjust Enrichment

Mr. Bateman has conferred a benefit upon the UEP by constructing valuable improvements on the lot as suggested by Pres. Johnson, the UEP's then presiding officer. The UEP was certainly aware of the improvements and in fact encouraged the construction of them. Having weighed the equities, the Court must determine whether, under the circumstances, it would be unfair for the UEP to keep the improvements without paying for them. The Court is of the opinion that such an outcome would be unjust.

Mr. Bateman was invited to build on UEP land by Pres. Johnson who served as his religious leader and also as the Pres. of the UEP. Pres. Johnson did not tell Mr. Bateman what the term of the use of the property would be, nor did Mr. Bateman ask. It was only after the improvements were underway that the UEP informed Mr. Bateman that he was a tenant at will and could be asked to leave at any time. The UEP knew that there was a Declaration of Trust which would serve to inform Mr. Bateman of the limitations on his use on the property but never brought it to his attention or discussed its terms with him. The UEP must bear the major portion of the blame for the confusion that has ensued. It would be patently unjust to allow the UEP to benefit from that confusion by acquiring a large home almost finished to house another beneficiary. On the other hand Mr. Bateman must share responsibility for some of the confusion since he never made inquiry as to his position on the UEP land or the terms of his use of the land. He simply made assumptions. Mr. Bateman was not able to demonstrate that he had been given any more than the right to use the property during his lifetime for so long as the trust thought wise.

Therefore the Court will award declaratory judgment in favor of Mr. Bateman on the ground of Unjust Enrichment providing for the same relief and subject to the same limitations as that afforded Mr. Bradshaw.

Benjamin Bistline

Mr. Bistline was named as a plaintiff in all six of the claims tried. At the conclusion of the plaintiffs' case, and on motion by the defendants, the Court dismissed Mr. Bistline's claims for implied contract and occupying claimant. Mr. Bistline occupies UEP land in Arizona. The surviving claims are express contract, negligent misrepresentation, constructive fraud, estoppel and unjust enrichment. The Court will now decide those claims.

Benjamin Bistline was born into The Work. He moved to Short Creek in 1945. He learned of the existence of a trust declaration for the UEP in the early 1950's but did not actually see the document until 1978-79. He had asked J. Marion Hammon if he could read the document in the mid 1960's but Hammon said he didn't have a copy. He assumed he became a member of the UEP when he married but he was unable to show that he was actually made a member by the trustees. He was listed as a beneficiary of the UEP at one time. He was told that he could build on UEP property by Richard Jessop. The land he was assigned had once belonged to Mr. Bistline's father. Mr. Bistline built his home between 1958 and 1970. He knew that he did not own the land and that he could not sell, mortgage or leave without losing the home. He was not specifically told that he was a tenant at will until 1987. In 1976 he signed a Quit Claim Deed conveying his interest in the property to the UEP. He intended that the land belong to the UEP. At the time he

signed the deed Mr. Bistline knew that the UEP had moved one Danny Barlow into his partially completed house while Mr. Bistline was away in Idaho. He regained use of the home only after helping Barlow build another house. When Barlow moved out, Mr. Bistline moved back in with the approval of religious leaders.

During 1983, Mr. Bistline participated in a meeting with Sam Barlow, the local police officer, and Sheriff Ken Campbell, the Washington County Sheriff. During that meeting he represented to the law officers that his home and lot belonged to the UEP. He told them that his mother had consecrated that land to the UEP.

At one point in his testimony Mr. Bistline stated that he had been told that he could live on UEP land as long as he wanted. However, when questioned further he was unable to identify the speaker, the time or the exact content of the statement.

Express Contract

The Court now finds that Mr. Bistline has failed to show the existence of an express contract containing the term of his occupancy of UEP land. Mr. Bistline has the burden of convincing the Court that he was extended an offer containing the specific term that he could occupy the property in perpetuity. He has failed to meet that burden. It is not even clear from the evidence that the person who told Mr. Bistline he could stay as long as he wanted had any authority to speak for the UEP. The Court finds against Mr. Bistline on his claim of an express contract as the evidence presented does not prove the claims in the Amended

Complaint and for the reasons stated in discussing the Bradshaw claim.

Negligent Misrepresentation

The Amended Complaint alleges that Mr. Bistline was told that the UEP would provide security for him by protecting the land upon which he resided, that he would be co-owner of the enterprises of the community, that he could only lose use of the home he had built if he abandoned it, and that the UEP would provide long term security for him. Mr. Bistline presented no persuasive testimony that these representations were made to him. He did testify that he deeded his interest in his home to the UEP because he wanted it to belong to the UEP. The Court is persuaded that he was motivated by his desire to fully participate in his religion's efforts toward practicing the United Order. He thought that he was a member of the UEP and The Work and that his just wants and needs would be met, although he had made no effort to determine how one became a member of the UEP or if he had been made a member or what membership entailed. The testimony presented does not support a claim of negligent misrepresentation because there has been no showing that Mr. Bistline justifiably relied on the representations of the UEP, assuming any were made, which he has not proven.

Constructive Fraud

Nothing in the testimony of Mr. Bistline indicates that he was is a confidential relationship with the defendants, as that term is defined in the cases cited above, or that his will in this matter was overcome because of his trust and confidence in the defendants when he made his various contributions to

the building of the religious community. Mr. Bistline was doing his best to be a good member of his religion when he decided to build a house on land which he knew did not belong to him. He trusted, as a matter of his religious faith, that his needs would be met by his religious leaders. He has a right to the free exercise of his religion under the laws of this nation and state. He cannot now claim that he was mislead or that he was defrauded by his own choices. The Court finds against Mr. Bistline on his claim of constructive fraud.

Estoppel

The testimony presented in this case does not support the claim of estoppel contained in the Amended Complaint. Mr. Bistline did not testify that he understood the position of the UEP to be as the Amended Complaint alleges in paragraph 45. The questions presented in this case simply never occurred to the parties until the religious dispute erupted around 1984. Mr. Bistline has failed to carry his burden of proof and did not even testify that he relied on the prospect of an undivided interest in the UEP, or the right to perpetual use of the lot assigned to him (he knew that could change from his experience with Mr. Barlow), or long term security from the UEP. The Court finds against him on that claim.

Unjust Enrichment

Mr. Bistline has conferred a benefit on the UEP by improvements constructed on land owned by the trust and the trust knew of the benefit since the use of the land was conditioned upon Mr. Bistline building thereon. As the Court views the equities in this case, it would be unjust to allow the UEP to require Mr. Bistline to surrender occupancy

of the home he built during his lifetime without compensation to him for the value of the benefit he conferred upon the trust.

As stated above, the UEP is a trust created by The Work to carry out clearly religious goals. Mr. Bistline conferred a benefit upon the UEP in furtherance of his own religious practice and beliefs. Neither the UEP nor Mr. Bistline contemplated the possibility that he would become estranged from The Work and yet still want to remain in the house he had been encouraged to build on UEP land. The UEP must share the majority of the blame for the situation now presented since it did not make clear to Mr. Bistline that he was a tenant at will in the house he built until after he had constructed the home. On the other hand Mr. Bistline clearly intended that the UEP own the home after he was through using it for his own purposes. The Court is of the opinion that it is inequitable to allow the UEP to invite religious adherents to build on its property without explaining fully the limitations on their use of the property and then to terminate the use of the property and take the improvements, within the lifetime of the person to whom use was allowed, without liability for the value of the improvements received by the Trust.

The Court finds for Mr. Bistline on the claim of unjust enrichment and will enter declaratory judgment providing the same relief and subject to the same limitations as that afforded Mr. Bradshaw.

Alma J. Burnham

Mr. Burnham was named in the Amended Complaint as a plaintiff on all six causes tried. At the conclusion of the

plaintiffs' evidence, and upon motion by the defendants, the Court dismissed the claim of implied contract. The Court will now address the remaining claims.

Mr. Burnham occupies land in Utah owned by the UEP. He became involved with The Work in 1946. He testified that he had never seen the Declaration of Trust for the UEP until shown it during the trial. He claims he is a member of the UEP but can't identify when he became a member. He produced no evidence that the UEP ever named him a member by vote of the trustees. He was listed among the beneficiaries of the trust at one time.

He testified that he received the use of a lot on UEP land when he moved to Short Creek. He spoke to J. Marion Hammon and Edson Jessop when he got a lot. He could not remember what was said or by whom, but he surmised that he could use the lot for his residence and for gardening. No other terms or conditions were discussed. He testified that he understood that he would be allowed to use the property throughout his life and his children would have use of it thereafter but he could not say anyone had specifically told him that. He did say that J. Marion Hammon told him the he (J. Marion Hammon) "hoped" that those things would happen. He did know that there were limitations to his use, as he could not sell the property, mortgage it or move away from it without losing it back to UEP.

He testified that he paid for the supplies that went into the improvements. No one ever told him that the improvements were consecrations to The Work and he never intended that they be. He remembers that adherents to The Work were encouraged to participate in the UEP because it was a step

toward the United Order, which was a goal of the religious movement.

Express Contract

The Court finds that Mr. Burnham has failed to establish the existence of an express oral contract relating to his use of the UEP land. He testified as to what he understood and what he surmised but was unable to say that anyone had actually promised him that he would be allowed to use the land for any particular period. The communications he related were insufficient to create a clear and definite contract enforceable by this Court. The Court finds against by Burnham on this claim for these reasons and the further reasons stated in the discussion of Mr. Bradshaw's claims.

Implied Contract

Mr. Burnham's claim for an implied contract fails as well because there was no credible evidence presented from which the Court can infer from the actions of the parties that a contract was formed relating to the claims in the Amended Complaint. The construction of the improvements on the lot owned by the UEP was attributable to Mr. Burnham's effort to live his religious beliefs, not to any commitment that he would have perpetual use of the lot. The same is true for his contributions to his religious organization.

Negligent Misrepresentation

For the same reason stated previously with regard to other plaintiffs' claims, Mr. Burnham has failed to prove that he has a claim for negligent misrepresentation against the trust. He was not promised the things contained in paragraph 30 of

the Amended Complaint, nor did he testify that he was mislead by the failure to disclose the items listed in paragraph 31 of that document. He never made any inquiry into his rights and status on UEP land, nor was that important to him. He entered into possession with little or no information as a freely chosen religious act and cannot now blame others for that decision. Even if he built in reliance upon representations from an agent of the defendants, his reliance thereon could not be seen as reasonable.

Constructive Fraud

Mr. Burnham has failed to prove by clear and convincing evidence that he was in a confidential relationship with the trust or its agents, or that his will in the matters of religion and business was dominated by that relationship. Mr. Burnham did not even claim that such was the case. He located in Short Creek on UEP land because he wanted to practice his religion there among others of like mind, not because he thought there was some reward promised to those on UEP land. He never gave thought to what would happen to his home if he left the religion or the UEP. He never inquired. Yet he knew his home could be lost under some conditions. His choice to proceed was his own, not that of someone who enjoyed his confidence.

Estoppel

Mr. Burnham has failed to prove his claim of estoppel. He did not know the positions of the UEP when he made contributions to his religious leaders. He certainly could not have relied on any such positions in the absence of such information. He has failed to present proof that he was given any assurances by anyone with authority to speak for the

UEP that he would be able to occupy the UEP land no matter what happened or relating to the other claims in the Amended Complaint.

Occupying Claimant

Since the land occupied by Mr. Burnham is in Utah, he is entitled to the protection of Utah's Occupying Claimant Statute. Section 57-6-1 UCA provides:

> "Where an occupant of real estate has color of title thereto, and in good faith has made valuable improvements thereon, and is afterwards in proper action found not to be the owner, no execution shall issue to put the plaintiff in possession of the same after the filing of a complaint as hereinafter provided, until the provisions of this chapter have been complied with."

The sections that follow establish a procedure for determination of the value of the improvements and the resolution of the issues presented.

Our Supreme Court has held:

> "An occupying claimant is required by our statute to establish two elements before he can recover for improvements placed on real property by him: (1) that he has color of title; and (2) that he placed the improvements in good faith. If he fails to establish either one, he cannot recover." *Hidden Meadows Dev. Co. v. Mills*, 590 P.2d 1244 (1979).

The same Court has also stated:

"The good faith of an occupying claimant must be premised upon a reasonable and honest belief of ownership..." *Ute-Cal Land Dev. Corp. v. Sather*, 645 P.2d 665 (1982). [*See also Erickson v. Stokes*, 237 P.2d 1012 (1951) and *Day v. Jones*, 187 P.2d 181 (1947).]

The plaintiffs in this case have not even claimed that they actually own the land they occupy. Each plaintiff took possession without any deed or evidence of ownership understanding that the right to occupy the land would be lost if they left, and that they could not sell or mortgage the land. The Court now finds that the improvements installed by the plaintiffs were not installed in good faith as they were installed upon the property of the UEP, knowingly by those who were using the land by permission.

Unjust Enrichment

For the same reasons previously stated with regard to the other plaintiffs, the Court finds that the UEP would be unjustly enriched if it were to terminate Mr. Burnham's use of his home during his lifetime and thus acquire the improvements to its land without having to compensate Mr. Burnham for the value of the improvements. The Court intends to enter the same declaratory relief in favor of Mr. Burnham as it has outlined for the previous plaintiffs.

The defendants argue that the Utah plaintiffs are not entitled to assert both the occupying claimant statute and the claim of unjust enrichment, as the statute abrogates the common law claim. They have cited no persuasive authority for that contention, however. The Court finds that the occupying claimant statute did not abrogate the common law of remedies for those who have built improvements upon lands

belonging to another. The statute applies to a narrow group of individuals, those acting under color of title and in good faith belief of ownership of the land. That category is not as inclusive as is the one for those who can claim protection under the common law as they need only be persons who built improvements on the land of another, with that other's knowledge, who are faced with loss of the improvements to the property owner. The unjust enrichment theory applies even to those who knowingly build on the property of another, which is the case before this Court.

Claude S. Cooke

Plaintiff Cooke was named as a plaintiff on all six of the causes tried. At the conclusion of the plaintiffs' evidence, and on motion of the defendants, the Court dismissed all of his claims except constructive fraud and unjust enrichment. The land he occupies is in the State of Arizona.

Mr. Cooke was born into The Work and has lived in Short Creek all his life. He knew of the existence of the UEP from the time he was very young and learned who the trustees were when he was in his late teens. He had high regard for Pres. Johnson and thought he was like God. He would have killed if asked by Pres. Johnson. He never saw the UEP Declaration until 1987 or so. He never asked to see it. He never heard its contents discussed in any forum. He thought he was a member of the UEP automatically but he was not sure how one became a member. He thought the UEP owned many businesses in the area but no one speaking for the UEP ever made that representation to him or promised him any interest in any business.

About 1974, he requested to be allowed to use a UEP lot to build a home. Pres. Johnson told him to go find Edson, get a lot, build a home, and then he would be given "a bird to put in his cage," meaning a wife. He was never promised any particular terms relating to the use of the lot. No period of time was mentioned. He built a large home and paid for materials and labor. He didn't intend his home to be a consecration to the UEP or a donation to The Work. He never considered his status on UEP land. He thought he owned the land although he knew that he had no ownership documents, could not sell, mortgage or leave or all would revert to the UEP. He was never told that he was a tenant at will until notified after the split into the two "wards."

Constructive Fraud

The first element of this claim is the existence of a confidential relationship. The Court finds that such a relationship did exist in Mr. Cooke's case. The Court is convinced from the evidence that Mr. Cooke had great trust and confidence in Pres. Johnson. He thought Pres. Johnson was like God and would have killed if directed to do so by Pres. Johnson. When he sought use of a UEP lot he was encouraged to build a house on the lot and if he did so he would be given a wife as a reward. Mr. Cook had lived in Short Creek all his life and had been devoted to The Work up to that time. Pres. Johnson was his religious leader and he felt constrained to carry out the direction he had been given.

The Court finds that Pres. Johnson had gained the trust and confidence of Mr. Cooke and offered him an extraordinary inducement to build improvements on the trust's property, specifically a wife. Of course, it was Mr. Cooke's desire to build the improvements in the first place, which is

why he approached Pres. Johnson and asked for a lot. Clearly the inducement and influence provided by Pres. Johnson did not overcome the will of Mr. Cooke, but was supportive of Mr. Cooke's prior decision to build a house on UEP ground.

There is another flaw in Mr. Cooke's claim of constructive fraud. Even if Pres. Johnson had dominated Mr. Cooke's will in influencing him to build on UEP property, one could not reasonably foresee that Mr. Cooke would build without any inquiry as to his rights on the property, the term of his occupancy, the legal status of his improvements, and so forth. Any reasonable person would have made such inquiries before building and Mr. Cooke cannot hold Pres. Johnson, or the UEP, responsible for his own lack of investigation and effort in protecting himself. For this reason, even though there appears to have been a confidential relationship and extraordinary influence exercised, the claim for constructive fraud fails.

Unjust Enrichment

There can be no dispute that Mr. Cooke has made valuable improvements to the property of the UEP with its encouragement and knowledge. The Court now finds that it would be unjust and inequitable to allow the UEP to take the improvements during Mr. Cooke's lifetime without compensating him for the value of the improvements to the UEP.

The equities in this matter weigh in favor of the plaintiff. Prior to the construction of the improvements on UEP land, Mr. Cooke was never told that he was a tenant at will and could be removed from the land at the whim of the trust. He

was never shown the declaration, nor informed of its existence and contents prior to the improvements. He was inexperienced in matters of business and did not even know how land was transferred. He thought that he had been given a UEP lot and the trust did nothing to disabuse him of that notion. The trust must bear the responsibility for the misunderstanding that has arisen about the extent of Mr. Cooke's rights to use the UEP land. Although the Court has found that Mr. Cooke did not act reasonably in building without an inquiry as to his rights, the trust did nothing to inform him of the limitations on this occupancy, even as he was invited and encouraged to build on UEP land and even as the trustees saw the improvements being constructed. The greater portion of the blame lies with the trust.

The Court will enter a declaratory judgment in favor of Mr. Cooke, providing the same relief and subject to the same limitations as that afforded Mr. Bradshaw.

Donald B. Cox

Mr. Cox was originally named in the Amended Complaint as a plaintiff in all six of the claims tried. At the end of the plaintiffs' evidence, and on motion of the defendants, the Court dismissed only the implied contract claim. The remaining claims will now be examined.

Mr. Cox occupies UEP land in Utah. He moved to Short Creek from Salt Lake in 1968. Prior to that move he spoke to J. Marion Hammon in Salt Lake and was asked to do a project. An assignment was made to Mr. Cox, which he carried out, to arrange to purchase a home from one Harold Blackmore in the Short Creek area. Mr. Cox spoke to Mr. Blackmore and agreed to buy his home on UEP land. He did

so using funds furnished by Fred Jessop, presumably belonging to the UEP. Mr. Cox then took up residence in that house while building his own home.

Following the Blackmore incident, Mr. Cox and J. Marion Hammon took a ride around the Short Creek area and Mr. Cox was invited to pick out a lot to build on. Cox testified that Hammon said, "I'd like you to build a nice home, a good home. Build it to last. I'd like you and your children to live there as long as you want. " No other conditions on his use were discussed, however he knew that the UEP would hold title to the property and that he could not sell, mortgage or abandon the property or it would revert to the UEP. No one told him that he was a tenant at will. He also knew that the UEP had as one of its purposes the protection of the land from the enemies of The Work.

Mr. Cox built improvements upon the lot. He did not intend that they were a religious donation to either the UEP or The Work. He intended that they be used by his family.

Mr. Cox knew there was a written declaration sometime in the mid 1960's. He had never seen it or requested to see it before he moved onto the UEP land. He was unable to show that he had been made a member of the UEP but he was on a beneficiary list at one time. He testified that he thought he was promised a pension in his old age but he was unable to be specific about the terms of that promise or the identity of the promisor.

Express Contract

The Court finds that the representations made to Mr. Cox did not create an express contract giving him the right to use

UEP land in perpetuity supporting the other contract claims in the Amended Complaint. Even the language testified to by Mr. Cox amounts to no more than a statement of a desire, a hope, a wish that Mr. Cox would be allowed to remain on the property throughout his life and his children after him. He was not promised that no one would interfere with his use of the property, no matter what he did. He understood that the land belonged to the UEP and that there were conditions on his use of the land. He understood that he needed the permission of the UEP to occupy the land. Nothing said by J. Marion Hammon canceled those limitations nor did those representations of Mr. Hammon's aspirations create an enforceable contract. Likewise the evidence does not support the other contract claims in the Amended Complaint. For these reasons, and those discussed with regard to the Bradshaw claims, the Court denies relief on these claims.

Negligent Misrepresentation

The Court finds that the evidence fails to establish a claim for negligent misrepresentation as to Mr. Cox. The Court is convinced that Mr. Cox moved onto UEP property as part of his religious practice and for the purpose of taking advantage of the safety and protection available to those in the Short Creek area. He did not build improvements because he thought there was some monetary reward in it for him. He was building up the Kingdom, just like his neighbors around him. That is why he undertook no inquiry as to this rights on UEP property. It was not important to him. That is why he never followed up on the suggestion that he might be entitled to some pension in his old age. His was a religious motivation.

One who asserts a claim for negligent misrepresentation must prove that he took reasonable steps to ascertain the truth. Mr. Cox has failed to prove any diligence whatsoever on his own part. He knew he was being offered the use of another's land and yet made no attempt to define his rights or the risks therein. He knew that there was a written declaration which might define his status, but chose not to pursue the reading of it. He failed to protect himself even though the means for doing so was available. He cannot now claim to have been deceived by the silence of the land owner when he never asked even the most obvious questions.

Constructive Fraud

The Court finds that Mr. Cox has failed to prove by clear and convincing evidence that he was in a confidential relationship with the trust or its trustees or that anyone overcame his will by undue influence. The Court so finds for the same reasons stated with regard to the previously discussed plaintiffs.

Estoppel

The Court also finds that Mr. Cox has failed to prove his claim of estoppel as he has failed to identify any act, statement, or admission upon which he relied. The Court is convinced that Mr. Cox built on UEP property for his own religious reasons and not in reliance on any representations by the UEP as to his rights of occupancy. In any case he made no effort whatsoever to inform himself of his rights. He cannot now profit from his own failure to act by casting blame on the owner of the land he asked to occupy. In addition the evidence fails to show that Mr. Cox knew the

position of the UEP or relied thereon to his detriment relating to the claims in the Amended Complaint.

Occupying Claimant

The Court finds against Mr. Cox on his claim of occupying claimant for the same reasons stated with regard to Mr. Burnham.

Unjust Enrichment

The Court finds that Mr. Cox has conferred a benefit upon the UEP by improving its land and that the UEP knew of and even encouraged the improvements. In weighing the equities, and for the same reasons stated with regard to the previously discussed plaintiffs, the Court finds that the UEP is primarily responsible for the confusion as to the rights of those building on UEP land and that it would be manifestly unjust and inequitable to allow the trust to take the improvements without compensation. The Court will enter declaratory judgment in Mr. Cox's favor providing the same relief, and subject to the same limitations, as that provided to the other plaintiffs previously discussed.

Harvey Joseph Dockstader Jr.

Mr. Dockstader was a plaintiff in the Amended Complaint as to each of the six claims tried. At the conclusion of the plaintiffs' case the Court dismissed the claims of implied contract and occupying claimant (Arizona land). The Court will now examine the remaining issues.

Mr. Dockstader was born into The Work in 1946. He moved to Short Creek in 1960 with his family. He heard of

the UEP in about that time frame. He worked on a UEP farm and had lots of contact with trustees of the trust. He first saw the Declaration in the mid 1980's. He knew early on that a written declaration existed but never asked, or was informed, of its contents before then. He received his first UEP lot from J. M. Hammon who told him that he had done a good job for the priesthood and was entitled to share in the benefits. Hammon told him that one of the benefits of living on UEP land was that it couldn't be sold or mortgaged and therefore it could not be lost by foreclosure. Hammon told him that "they" could live there as long as they wanted.

He opined that he became a member of the UEP in the Fall of 1965 when he was given the use of a lot. He produced no evidence that the trustees had made him a member by voting or that he was promised membership. At one time he was named as a beneficiary of the UEP in documents recorded in Arizona.

Mr. Dockstader received a lot from the UEP after his arrival in the area. He built a small house. Later he built a larger home on another piece of property in the area which did not belong to the UEP and abandoned the small house to the UEP. He bought and paid for the land and the larger house, then suffered some business losses and the larger home was foreclosed. In the winter of 1975-76 he went to Pres. Johnson and requested to be allowed the use of a lot on UEP ground. Pres. Johnson gave him permission to build onto his mother's home on ground she had previously contributed to the UEP. He testified that Pres. Johnson told him that he could live there as long as he wanted. He knew he was building on land he did not own and that he could not sell, mortgage or abandon it. He did not think of his house as a consecration to the UEP or The Work. He had never

been told that he was a tenant at will until he was notified by mail in the 1980's. Mr. Dockstader did testify on cross examination that he had real estate training in 1979 and was a real estate agent in the State of Arizona.

Express Contract

The Court finds that Mr. Dockstader has failed to prove the existence of an express oral contract regarding the use of UEP land or the other claims in the Amended Complaint. The casual conversation to which he testified does not contain clear and definite terms enforceable by the Court. There was no mention of the term of use being granted or the limitations on occupancy. Mr. Dockstader was simply given permission to build onto his mother's home, which he has done.

Mr. Dockstader never testified that he was promised an undivided interest in the corpus of the UEP or the enterprises in the community or that he would have the use of any land in perpetuity. For these reasons and those discussed with regard to the claim of Mr. Bradshaw, the Court denies this claim for relief.

Negligent Misrepresentation

The Court is unpersuaded by the evidence presented that Mr. Dockstader has proven this claim. He had occupied UEP property previously and understood how the program functioned. He knew the land he was building on did not belong to him and that he could lose its use upon the occurrence of one of several events. He had sought and obtained permission to build on UEP land without even the slightest inquiry into his status on the land. He knew there

was a written trust document but never asked to see it or even inquired about its contents. It was not reasonable for Mr. Dockstader to rely on the casual discussion he had with J. Marion Hammon and he took no reasonable steps to learn the truth of his situation. His reliance on information from the trust, or the lack thereof was unreasonable.

For those reasons stated with regard to previous plaintiffs as well as those set out above, the Court finds that Mr. Dockstader has failed to prove his claim for negligent misrepresentation.

Constructive Fraud

The Court finds that Mr. Dockstader has failed to prove this claim as well. Mr. Dockstader has presented no testimony that would convince this Court that he was in a confidential relationship with the UEP or its agents or that he was subjected to extraordinary influence when he was allowed the use of UEP property as he requested, or that his free will was overcome by an influence from the UEP. He could have clarified his status with the most basic of inquiries but he did not do so. For the reasons stated with regard to previous plaintiffs, the Court finds against this plaintiff on this claim.

Estoppel

The Court finds that Mr. Dockstader has failed to prove the elements of estoppel. He never testified that anyone connected with the UEP leadership told him that he would be a co-owner of all property held by the UEP or that the UEP would take care of his long term needs. He claims that he was told he could occupy UEP property for as long as he

Thirteenth Affirmative Defense

To the extent that Plaintiffs seek to have this Court substitute judicial management in place of the judgment of the Trustees of the United Effort Plan and the Fundamentalist Church of Jesus Christ of Latter Day Saints, relative to membership, religious authority, control of religious organizations, participation in church programs, and/or allocation of the financial or property resources of the Fundamentalist Church of Jesus Christ of Latter Day Saints, directly or indirectly, relief of this type is prohibited by the First Amendment to the United States Constitution and Art. I. Sec. 4 of the Constitution of the State of Utah.

Eighteenth Affirmative Defense

Plaintiffs assert that the representations which constitute the basis for their contract and misrepresentation claims were made during the course of sermons and religious teachings during religious services offered by the religious association now organized as the Fundamentalist Church of Jesus Christ of Latter Day Saints. Unilateral religious instruction during church services, made by church leaders to the congregation, including solicitations for the financial support of the church, its leaders, and programs, cannot, as matter of law, serve as the basis for claims grounded in contract and/or misrepresentation.

Nineteenth Affirmative Defense

Religious instruction during religious services is religious speech, and is protected as such under the First

Amendment to the Constitution of the United States, and Art. I. Sec. 15 of the Constitution of the State of Utah. Constitutionally protected religious speech may not be treated as commercial or contractual speech giving rise to commercial or contractual obligations.

Twentieth Affirmative Defense

Plaintiffs at all relevant times had actual and constructive knowledge that the representations which they describe as giving rise to the contract and misrepresentation claims presented in the Complaint were religious speech, entitled to constitutional protection.

Twenty-Fourth Affirmative Defense

The operational policies of the United Effort Plan regarding the use of lands owned by the United Effort Plan are consistent with the historic teachings of the Fundamentalist Church of Jesus Christ of Latter Day Saints. expressed regularly in church sermons, and described in sacred scripture. Church members were regularly taught that the individuals who did not support the religious work of the Church must vacate United Effort Plan lands.

At the trial court level, the petitioners continued to advance defenses based on the protection afforded by the First Amendment to the United States Constitution. In the petitioners' Memorandum filed in support of their Motion for Summary Judgment, pages 14-16, the petitioners urged the court to dismiss the complaint on religious grounds:

D. *Religious teaching and the United Effort Plan*

The United Effort Plan, and its role in the fundamentalist religious community, was a regular topic during the thousands of religious meetings held under the auspices of the Priesthood Work during the last 50 years. Virtually every communication concerning the UEP was expressed by members of the Priesthood Council or other religious leaders to the gathering attending regular Sunday meetings, Priesthood meetings, and theology classes. The Plaintiffs have been completely unable to come forth with evidence of specific statements (including the time, date, place, and speaker) where they were told anything that contradicted with religious teachings concerning the UEP offered at religious meetings.

The Defendants have conducted a massive review of incomplete and partial records, produced haphazardly over the last 40 years, to create a partial schedule of religious meetings held, including the names of some of the individuals attending those meetings. This information has been produced to Plaintiffs.

These records identify 1,780 religious meetings from 1958 to 1986 held under the auspices of the Priesthood Work. The records show that at least one or more of the Plaintiffs attended at least 1,390 of these meetings.

The Defendants have also assembled an incomplete record of teachings offered at these religious meetings concerning the UEP. Exhibit "D" sets forth excerpts of those teachings which address the United Order and the United Effort Plan.

At those meetings, Church President Leroy S. Johnson also regularly urged those in attendance to study the Journals of Discourses, re-published under his direction in the late 1950s. Between 1874 and 1884, at least 47 sermons contained in the Journals of Discourses emphasized the critical importance of United Order principles to personal salvation.

In the face of these teachings, it is patently incredible to claim, as the Plaintiffs' pleadings assert, that the UEP was nothing but a commercial enterprise which had nothing to do with the Priesthood Work or the United Order.

Finally, the Plaintiffs' own statements under oath, as opposed to the assertions in their pleadings, frankly recognize the religious character of the UEP. Exhibit "E" contains a selection of such statements, with record references.

E. *Conclusion*

The UEP is a religious and charitable trust established by the Priesthood Work in 1942 as a step towards the United Order, a principle of the Restored Gospel.

Despite years of litigation, Plaintiffs remain completely unable to produce any evidence raising a genuine issue of material fact regarding the religious and charitable character of the United Effort Plan. The law of trusts mandates that this Court give effect to the will of the religious trustors, as declared in the Declaration of Trust, and as implemented by their religious successors

in the Fundamentalist Church of Jesus Christ of Latter-Day Saints.

The petitioners preserved their constitutionally based affirmative defenses based on religious freedom in the schedule of contested issues of law set forth in the the Pre-Trial Order, pages 24-25:

8. May persons who donate money to a religious group sue for a refund when they no longer follow the principles of the leadership and majority of the members of the group?

9. May the court adjudge the appropriateness of the use of funds donated to a religious body for religious purposes?

10. May the plaintiffs maintain claims based upon the alleged statements of deceased men, allegedly made in the 1950s and 1960s, and witnessed by no one other than the plaintiff asserting the statement as the basis of his or her claim?

11. Are the plaintiffs claims barred by the doctrines of estoppel, waiver, authorization, laches, and ratification?

12. Because the relief plaintiffs seek would compromise the religious conduct of thousands of faithful church members by terminating the religious foundation of the UEP, does equity prevent the court from granting plaintiffs the relief they seek?

14. Religious instruction during religious services is religious speech, and is protected as such under the First Amendment to the Constitution of the United States. and Art. I, Sec. 15 of the Constitution of Utah. Constitutionally protected religious speech may not be treated as commercial or contractual speech giving rise to commercial or contractual obligations.

15. Defendants incorporate by reference the affirmative defenses set forth in their Answer to Amended Complaint and do not waive the defense set forth therein.

In their Post Trial Memorandum, page 4-7, the petitioners once again urged the trial court to appreciate the centrality of the religious issue at stake in this matter:

B. *The "Neutral Principles of Law " Doctrine Does not Allow the Court to Ignore the Religious Setting in Which this Case Arose.*

Plaintiffs urge that "neutral principles of law" require the court to ignore this circumstantial evidence [religious context of statements of deceased religious leaders] because the First Amendment requires the court to blind itself to all evidence of religion in resolving the dispute. This is a serious misstatement of the "neutral principles" doctrine. The "neutral principles" doctrine does not require the court to engage in the narrow, incomplete analysis which the plaintiffs advocate and which is in a very real sense their only hope in this case. Neither does it permit the court to resolve issues of religious faith by framing judicial discussion in neutral legal language.

Neutral principles does not allow the court to ignore circumstantial evidence of the pervasive religious culture of the community or the religious faith and practices of the key players in the dispute. Rather, "neutral principles" is a narrow doctrine which precludes the court from resolving a question of religious doctrine or polity in the course of its resolution of a dispute. *Jones v. Wolf*, 443 U.S. 595, 607, (1979). The doctrine does not permit the court to ignore the implications of religion in a dispute. To the contrary, it requires the court to carefully consider evidence of religious belief and make a threshold determination of the role religious doctrine plays in resolution of the dispute.

Although a form of the "neutral principles" analysis can be found as far back as *Watson v. Jones*, 80 U.S. 679 (1871), the doctrine was really first developed in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1968). Like other "neutral principles" cases, the Hull case involved a dispute over ownership of a meeting house. The Supreme Court held that the lower court's attempt to determine which faction had departed from church doctrine violated the First Amendment, but that in certain limited cases it might be possible to resolve such an ownership dispute using "neutral principles" of law. The court stated that "the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes, " 393 U.S. at 449, and that religious people must have "power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Id.* at 448. The message of Hull is that only where here the court is persuaded that, in fairness, the

dispute between the parties does not turn on doctrinal issues, may the court become involved. It may not simply use "neutral principles" as a pretext to ignore the religious issues in dispute. *Jones v. Wolf*, 443 U.S. at 602.

In fairness, the dispute between the parties here involves a much larger set of communications between the parties than simply the snapshot in time when each plaintiff was assigned the use of a lot. The plaintiffs were not simply assigned a lot. They were granted permission to participate in the United Order effort so long as they remained faithful. Merrill Harker described his "contract" as a "stewardship." The defendants' position, that permission may be revoked, is consistent with the documented fundamentalist belief that all blessings, including participation in the United Order, are contingent upon faithfulness in the Work. The plaintiffs' position, that permission to participate in the Effort is irrevocable, has no support in religious scripture, and is internally inconsistent. A "consecration" is a religious gift. It does not create enforceable legal rights.

Plaintiffs completely misapprehend the neutral principles doctrine. They assert that the court would violate neutral principles if it is found that the UEP property was subject to priesthood control. (Plaintiffs' Brief pp. 12, 14). Plaintiffs have the analysis reversed. Under neutral principles, the court must make that threshold determination. The court cannot accept the plaintiffs' invitation to substitute neutral principles of law for the parties decision that religious precepts would control.

C. *Boundaries of the Defendants' Free Exercise Rights.*

> There can be no dispute in this case that the UEP is a religious institution. All of the plaintiffs conceded at trial that the UEP was a "step toward" the United Order. Defendants have previously pointed out the language of religion contained in the trust document. The First Amendment to the U.S. Constitution and Article I, section 4 of the Utah Constitution both guarantee the right of religious exercise free from governmental interference. . . .
>
> This case is about the future right to manage real property consecrated by religious people during the last half century to the Priesthood Work and deeded to the United Effort Plan Trust. The court may not decide, expressly or implicitly, who is entitled to membership in the Trust; may not divorce the Trust from its religious parent, the Fundamentalist Church of Jesus Christ of Latter Day Saints; and may not substitute its judgment for that of the Bishop regarding the distribution of benefits according to the "just wants and needs" of the members."

The trial court, in its Memorandum Decision issued Jan. 11, 1996, pp. 91-92, rejected the religious protection arguments advanced by the petitioners. *See* Appendix A, pp. 96A-97A.

The petitioners challenged the decision of the trial court on the religious issues in its appeal to the Utah Supreme Court. The Utah Supreme Court affirmed the decision of the trial court, specifically addressing these issues at 351 Utah

Adv. Rep. 3, 9-10 (reproduced at pages 28C-30C of Appendix C.

APPENDIX F

DECLARATION OF TRUST

STATE OF UTAH)
:ss
COUNTY OF SALT LAKE)

KNOW ALL MEN BY THESE PRESENTS: That we, the subscribers and trustees hereto have this 9th day of November, 1942, entered into an agreement and contract to create a trust under which the appointed and constituted trustees hereunder shall be empowered to operate as hereinafter set forth.

To this end the subscribers associate themselves together in the formation of a trust for the purposes hereinafter stated, and without personal liability to the members hereof or to the public. It is intended and proposed that all others than the subscribers hereto who may become members in this association ipso facto agree to accept the terms of this instrument and declaration of trust to all intents and purposes as if they were the original subscribers hereto. Further, it is understood and agreed that we and such other members as may hereafter come into said association are associated together merely and solely for purpose of being cesti que trustents of the trust hereby created, thus being entitled to the equitable and beneficial interests of all profits and property, both personal, real and mixed, of the trust estate hereby created, in accordance with their respective just wants and needs as determined from time to time by the Board of Trustees and as the trust estate may be able to respond thereto.

The association shall be known as the UNITED EFFORT PLAN.

We do now covenant and declare that the following are and shall be the fundamental articles of said trust by which we and all persons who at any time hereafter may transact any business with said trustees pertaining to the trust shall be bound and concluded. The contracting parties and trustees herein signify and confirm by their signatures to this instrument their acceptance of all its terms and their obligation to perform and discharge the duties imposed by this instrument.

I

John Y. Barlow Leroy S. Johnson

Joseph W. Musser J. Marion Hammon

Rulon T. Jeffs

are hereby designated trustees of said trust, with powers and duties, and the limitation of the same, as hereinafter set forth.

II

Joseph W. Musser, trustee, is to fill the office of Secretary, and Joseph W. Musser, trustee, is to fill the office of Treasurer, and shall perform such other duties as are necessary and usually performed by such officers in a similar business; but it is specifically understood that they shall have no power to bind the trust by contract except as such powers are delegated to them in writing by a majority of the trustees, or by a resolution passed at a regularly called meeting of the trustees.

III

John Y. Barlow, trustee, shall be President of said association with powers, duties, authority and rights to do all things necessary in assisting to carry out the purposes of said trust as hereinafter set out, and said trustee, acting with the other trustees, is hereby empowered to execute all contracts, deeds, transfers, assignments and other instruments to pass title to property, bind the trust estate as may be deemed essential to the interests of the trust; provided, however, that in the absence of the President or in the event of his inability to act through sickness or otherwise, the Vice-President may act in such duties; such instruments also being signed by the Secretary or Assistant Secretary in attestation, with the seal of the association impressed thereon.

IV

Leroy S. Johnson, trustee, shall act as Vice-President of said association.

V

The trustees aforesaid and their successors in trust shall hold the legal title to all property that may be acquired by or for the benefit of the trust estate, and shall have and exercise exclusive management, disposition and control of the same, subject to the terms and provisions of this Declaration of Trust.

VI

The trustees may appoint a General Manager, Assistant Secretary, Assistant Treasurer, or other officers who may or

may not be trustees, and the respective duties of whom shall be designated by the Board of Trustees from time to time.

VII

The Board of Trustees shall not be less than three, nor more than nine in number; provided, that upon their own initiative and their own action the Board of Trustees may increase the board membership to any number deemed advisable of the best interests of the trust, and may choose additional trustees in accordance with such action.

VIII

The purpose and object of the trust shall first be charitable and philanthropic, its operations to be governed in a true spirit of brotherhood; and to accomplish such purpose, it may engage in any and all kinds of legitimate business ventures; provided, however, that such endeavors or adventures of whatsoever name of nature shall in no wise conflict with the Constitution of the United States, or the constitutional laws of the land where such operations may be carried on.

IX

The trustees shall not be liable to the members of the trust estate for error in judgment in prosecuting and managing the trust property, interest or business, nor for any act done by them, or either of them in the course of such management, nor for omission to act in the execution of this trust, except such acts as involve bad faith on their part; nor shall they be liable for the acts or omissions of each other, nor for the acts or omissions of any officer, agent, or servant appointed or acting for them; and should they or either of them be held

personally liable on any tort or breach of contract in the prosecution of the trust estate, they or either of them will be entitled to indemnity out of the trust estate to the extent of such liability.

X

The trustee shall have authority to fix all salaries or other compensation, both for themselves and for other employees or agents of the trust and may pay the same out of the trust funds; and such salaries or compensation shall be reasonable and consistent with the purposes and condition of the trust estate.

XI

A trustee or other officer may be removed at any time for cause, misconduct, or breach of trust, by a majority vote of said trustees at a special meeting called for the purpose; and upon the death, removal, or resignation of any trustee or other officer, such vacancy or vacancies may be filled by the remaining members of the Board of Trustees.

XII

Membership in the trust estate is established for the signers of this instrument and who form the first Board of Trustees, by the conveyance to the trust estate of the following described property, situated in Mohave County, State of Arizona, to-wit:

Commencing 80 rods north of the south-west corner of Section 31, Township 42 north, Range 6 west, Gila and Salt River Meridian; and running thence east 240 rods;

thence north 66 rods more or less to the county road, thence west along south boundary of county road 240 rods to a point 72-1/2 rods north of the place of beginning, thence south 72-1/2 rods to the place of beginning, containing 104 acres, more or less.

Also Lot 6 and the south-east 1/4 of the south-west 1/4 of said Section 31.

Also Lots 3, 4, and 5 and the south-east 1/4 of the north-west 1/4, Section 6, Township 41 north, all being in Range 6 west.

Also Lots 1, 2, 3, and 4 and the south ½ of the north-west 1/4, the south-east 1/4 of the north-east 1/4 Section 1, Township 41 north of range 7 West, of above Meridian in Arizona.

Containing in all 619 acres more of less.

Also, beginning at a point 40 rods south of the north-east corner of Section 6, Township 41 north, Range 6 west, above Base and Meridian, and running thence west 20 rods, thence south 40 rods, thence east 20 rods, thence north 40 rods to place of beginning, and containing 5 acres more or less.

Evidence of membership shall be shown in the books of the association. A membership certificate may, in the discretion of the trustees, be issued to each member; but such certificate shall not be transferable, nor carry title to any of the property or assets of the trust.

The proceeds arising from the operations of the trust estate shall be used by the trustees for the performance of this trust as herein provided, and any profits arising from the conduct of the business shall become part of the corpus of the trust fund. The trustees are hereby authorized to set aside from time to time such portions of the net income as they may think proper as a surplus out of which to declare dividends; provided, however, that from time to time the said trustees may make a division of the trust fund or property as may by them be deemed advisable to individual members of the trust, or all of them, strictly in accordance with their just wants and needs; and provided, further, that the trustees may render needed assistance to non-members of the trust when deemed wise by them.

Further and additional membership shall be established and added to by the consecration of such property, real, personal or mixed, to the trust in such amounts as shall be deemed sufficient by the Board of Trustees; provided, however, that any member may be expelled or excluded from the trust for actions prejudicial to the interests of the trust, by a majority vote of the Board of Trustees, at a special meeting of the Board called for that purpose; and provided, further, that any member being thus expelled or excluded from the association shall have no further claim upon the trust estate.

XIII

This trust shall continue for such time as the business proves to be advantageous, but may be terminated sooner by the trustees if they deem it advisable so to do for the best interests of the trust estate and the members thereof.

XIV

Membership in said association shall not entitle the member to any part of the trust property, either personal, real or mixed; nor to the right to call for a partition or division of the same, or for an accounting; nor shall any member have any right to amend, alter, or terminate this trust; provided, however, that amendments may be made to this Declaration of Trust by a majority vote of the Board of Trustees.

The trustees shall have no power to bind the members personally, and the members and all parties whosoever extending credit to, contracting with, or having any claim against the trust, shall look only and solely to the funds and property of the trust for payment under such contract or claim, or for any debt, damage, judgments or decrees, or for any money or property that may otherwise be due or become due or payable to them from the trustees, so that neither the trustees or members at any time shall be personally liable by themselves, or by any contract which any officer or agent of the trust shall give or enter into. It shall be the duty of the trustees to refer to this Declaration of Trust and to stipulate that any contract or obligation entered into by them shall be subject to all the terms and conditions of this Declaration of Trust.

Further, it is declared that any person who shall accept a membership in said trust ipso facto becomes a party to this Declaration of Trust and shall be bound and concluded by all the terms and conditions thereof.

XV

The death of a member or trustee during the continuance of this trust shall in no wise operate to terminate the trust, nor shall it entitle the legal representative of the deceased member or trustee to an accounting or to take any action in court or elsewhere against the trustees.

XVI

The original of this Declaration of Trust shall remain a part of the files of the Board of Trustees. It may, however, be recorded in the offices of the county recorders in the states wherein the property of the trust may be located. The general office of the trust shall be at Salt Lake City, Utah, unless and until it be moved elsewhere by act of the Board of Trustees. The trust may also establish branch offices by action of the trustees.

XVII

In the event of the termination of this trust, the then members of record shall participate in the distribution of all the properties belonging to said trust estate, and the assets shall be distributed upon the basis of share and share alike.

XVIII

To eliminate any question which might be raised as to the intention of the parties to this instrument, as well as cestui que trustents, it is hereby stipulated and declared that the purpose is to create a trust and not a partnership.

XIX

The trust shall have a seal which shall be of such form and device as the trustees may determine; and it may be changed from time to time.

IN WITNESS WHEREOF, we, the trustees and original contracting parties under this Declaration of Trust, sign our names in duplicate, original in authorization, the day and year first above written.

s/ John Y. Barlow

s/ Leroy S. Johnson

s/ J. Marion Hammon

s/ J. W. Musser

s/ Rulon T. Jeffs

STATE OF UTAH)

:ss

COUNTY OF SALT LAKE)

Before me, the undersigned authority personally appeared John Y. Barlow, Leroy S. Johnson, J. Marion Hammon, J. W. Musser and Rulon T. Jeffs, known to me to be the persons whose names are subscribed to the foregoing instrument and severally acknowledged to me that they executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal this 9th day of November, 1942.

s/ Charles F. Zitting
Notary Public, residing at
Salt Lake City, Utah

Commission Expires:
October 29, 1943

CERTIFICATE OF AMENDMENTS TO
DECLARATION OF TRUST OF
TRUST OF THE UNITED EFFORT PLAN

"BE IT HEREBY RESOLVED:"

"That ARTICLE III of the Declaration of Trust of THE UNITED EFFORT PLAN shall be amended to read as follows:

'John Y. Barlow, Trustee, shall be President of said association until incapacitated by removal, resignation or death, with powers, duties, authority, and rights to do all things necessary in assisting to carry out the purposes of said trust as hereinafter set out, or as in the future amended; and said Trustee, as President, upon being duly authorized by resolution of the Board of Trustees, is hereby empowered to execute all contracts, deeds, transfers, assignments, and other instruments to pass title to property and otherwise bind the trust estate, as may be deemed essential to the interest of the Trust; provided, however, that in the absence of the President, or in the event of his inability to act through sickness or otherwise, the Vice-President may act in such capacity; such instruments also being signed by the Secretary or Assistant Secretary in attestation, with the seal of the association impressed thereon.'

"That the third paragraph of ARTICLE XII, which paragraph now begins 'The proceeds arising from the operations, etc.,' of said Declaration of Trust shall be amended to read as follows:

'The trust is designated a non-profit organization. The proceeds arising from the operation of the trust estate shall be

used by the Trustees for the performance of this Trust as herein provided, and any profits arising from the conduct of the business shall become part of the corpus of the trust fund. From time to time the said trustees may make a division of the trust fund or property as may by them be deemed advisable, to individual members of the Trust, or all of them, strictly in accordance with their just wants and needs as determined by the said trustees; and provided further, that the Trustees may render needed assistance to non-members of the Trust when deemed wise by them.'

"That ARTICLE XIII of said Declaration of Trust shall be amended to read as follows:"

'This Trust shall continue for one hundred years from date hereof, but may be terminated sooner by the Trustees, if they deem it advisable so to do, in the best interest of the trust estate and the members thereof.'

"AND BE IT FURTHER RESOLVED that the Secretary or Assistant Secretary be hereby authorized and instructed to file a certified copy of this resolution adopting those amendments in their offices of the Recorders in the respective counties in which the original Declaration of Trust are or may hereafter be recorded."

STATE OF UTAH)
:ss
COUNTY OF SALT LAKE)

I, Rulon T. Jeffs, Trustee and Assistant Secretary of THE UNITED EFFORT PLAN, a common law trust, having its principal office in Salt Lake City, Utah, being sworn, depose and say that the above is a true and correct copy of a resolution adopted by unanimous vote of the Board of Trustees as a meeting duly held on April 6, 1946; and the same appears of record in the minutes of said meeting.

s/ Rulon T. Jeffs

Assistant Secretary

Subscribed and sworn to before me this 10th day of April, 1946.

s/ Leone Erickson

Supreme Court, U.S.
FILED
APR 21 1999
CLERK

(2)

No. 98-1334

In The

Supreme Court of the United States

October Term, 1998

FUNDAMENTALIST CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, et al.,

Petitioners,

vs.

CYRIL BRADSHAW, et al.,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Utah

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

RUSSELL S. WALKER
WOODBURY & KESLER, P.C.
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April 21, 1999

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INTRODUCTION

This case arises from claims made by 21 individuals (referred to herein as the "Plaintiffs") seeking to establish their property rights in homes which they constructed on property titled in the name of the United Effort Plan, a Common Law Trust (the "UEP" or the "Trust").[1] The Plaintiffs were and are members of a religious movement known as the "Priesthood Work" or the "Work," which espouses and emphasizes certain historical teachings of present-day Mormonism. The Plaintiffs are all residents of a community formerly known as Short Creek, which is currently known as Colorado City, Arizona and Hildale, Utah. The community is composed almost entirely of individuals affiliated with the Work.

In the course of participating in the Work, each Plaintiff received a building lot on UEP land, and each Plaintiff built a home on his lot through his own expense and effort. In the late 70's and early 80's, a schism divided adherents to the Work arising from a dispute over the form and nature of group leadership. The larger of the two resulting groups, which became known as the "first ward," ultimately gained control of the UEP. In 1986, the first ward installed new UEP trustees and declared that

---

[1] The UEP, its trustees, and the Fundamentalist Church of Jesus Christ of Latter-Day Saints ("FLDS Church") are referred to collectively herein as the "UEP." Plaintiffs note that organization of the UEP pre-dates the organization of the FLDS Church by over forty years, and the FLDS Church did not exist when this litigation originally began. Moreover, the FLDS Church does not hold title to any of the property at issue in this dispute, and has not asserted any interest in such property independent of that held by the UEP.

the Plaintiffs, most of whom were loyal to a smaller group known as the "second ward," were "tenants at will" on the property and were subject to eviction at the pleasure of the new trustees.

In 1987, Plaintiffs instituted a lawsuit in federal court seeking a determination of their rights. That lawsuit was dismissed for want of a substantial federal question and refiled in state court in 1993. After a full trial on the merits, the trial court determined that while the UEP owned title to the Plaintiffs' homes, it held the property in constructive trust for the Plaintiffs, such that if the UEP were to evict any Plaintiff, it would be required to pay that Plaintiff for the value of the improvements that the UEP would thereby obtain. The trial court did not decide which "ward" was the true continuation of the Priesthood Work, and in fact resisted several attempts by the UEP to cast the Plaintiffs as "apostates" or "religious dissidents."

In its Petition, the UEP now argues that the trial court's adjudication of the parties' claims violated the free-exercise clause of the First Amendment. The UEP makes this assertion notwithstanding the fact that the trial court expressly found that the UEP had failed to prove any burden on the free exercise of religion, and despite the fact that the UEP did not order a transcript of the trial with which to challenge that finding on appeal. Plaintiffs contend herein that review is not warranted because the trial court properly adjudicated the case based on neutral principals of law, without burdening the free exercise of religion. Plaintiffs urge this Court to reject

the UEP's request for blanket immunity from civil suits, and deny the Petition for Writ of Certiorari.

STATEMENT OF THE CASE

A. Background facts.[2]

Between the early 1950's and the late 1970's, each of the Plaintiffs became associated with the Priesthood Work and became aware, to one degree or another, of the existence of the UEP, which was then administrated by a body of religious leaders known as the "Priesthood Council." (UEP Pet. at 3A). Each Plaintiff participated in the religious programs of the Priesthood Work, and contributed to the building up of the Short Creek community by donating labor, goods, money, and time. (UEP Pet. at 5A-6A).

Between 1959 and 1978, each Plaintiff was given a building lot for the express purpose of building a home for himself and his family. (*See, e.g.*, UEP Pet. at 29A-30A). Each Plaintiff built his home on UEP ground intending that the home would be his own. (*See, e.g.*, UEP Pet. at 30A). Each Plaintiff learned or was told that he could not mortgage or sell the home and that if he chose to abandon the home, the home would then belong to the UEP. (UEP Pet. at 5A). However, no Plaintiff was ever instructed that he was a tenant at will, or that anyone, including the UEP or the religious leaders, could remove

---

[2] Unless otherwise noted, citations are to the trial court's Memorandum Decisior and Order set forth in the Petition for Writ of Certiorari ("UEP Pet.") at pages 1A through 98A.

him from his home under any circumstances. (UEP Pet. at 6A).

In the late 1970's and early 1980's, a schism developed among the Priesthood Council. After the death of President Leroy S. Johnson, the group divided into two groups known as the first ward and the second ward. The first ward abandoned the former Priesthood Council system of leadership, and replaced it with a presidency under the control of Rulon T. Jeffs. The smaller second ward continued the tradition of the Priesthood Council under the direction of J. Marion Hammon, Alma A. Timpson, and others. (UEP Pet. at 12A). Many but not all of the Plaintiffs are affiliated with the second ward group.

Rulon Jeffs and the first ward leadership ultimately gained control of the UEP by removing J. Marion Hammon as a trustee and appointing new trustees from among loyal first ward members. (UEP Pet. at 12A). In 1986, Rulon Jeffs sent a notice to the Plaintiffs and others living on UEP land stating that they were tenants at will on the property. Approximately one year later, the Plaintiffs instituted a lawsuit in the United States District Court for the District of Utah seeking a determination of their rights. (UEP Pet. at 12A).

From the outset, the purpose of Plaintiffs' claims has been to secure their interests in the homes that they have constructed on UEP property. Specifically, Plaintiffs have sought declaratory relief in the form of an order precluding the UEP from evicting them without compensating them for the value of the homes that the UEP would thereby obtain. The Plaintiffs also asserted general claims against the trustees and the Trust for breach of fiduciary

duty, accounting and distribution of the trust, which have not yet been adjudicated.

Plaintiffs' property claims were tried in December of 1994 and May of 1995. After hearing 19 days of testimony, receiving written memoranda, and hearing the closing arguments of counsel, the Court issued its written Memorandum Decision on January 23, 1996, awarding Plaintiffs relief pursuant to their claims for declaratory relief based on unjust enrichment. Specifically, the trial court found that the UEP would be unjustly enriched if allowed to drive Plaintiffs from their homes and to retain the benefit of the improvements constructed by the Plaintiffs without making any payment therefor.

After numerous post-trial motions and objections to various forms of the Order, the Court entered its Final Judgment on October 15, 1996. Therein the Court ordered that the UEP owns the relevant property, but holds it in constructive trust for the benefit of Plaintiffs throughout their lifetimes, such that if the UEP removes any Plaintiff from his home, it must compensate that Plaintiff for the value of the improvements it thereby obtains. The Final Judgment also addressed considerations including the payment of taxes, construction of improvements, and other practical matters, none of which is at issue here.

B. Factual basis upon which relief was granted.

The Statement of the Case set forth in the UEP's Petition attempts to demonstrate that the Plaintiffs knew they were subject to the UEP's control and that the Plaintiffs intended that their homes would belong to the UEP.

Quite to the contrary, the trial court found that no Plaintiff intended that his home would be anything other than his own home, and that no Plaintiff understood that he was subject to removal from his home at the whim of the UEP. The following facts drawn from the trial court's Memorandum Decision and Order provide adequate support for the Judgment awarding Plaintiffs an equitable interest in their homes:

1. The general understanding of UEP policy regarding the unfaithful was based on a widely publicized report of a vision received by Joseph Musser in which he was told by God that unfaithful residents would become discouraged and leave voluntarily. (UEP Pet. at 2A-3A).

2. The Plaintiffs and others in the community were often told that having a home on UEP land would be more secure than having a deed. (UEP Pet. at 5A).

3. The Plaintiffs were told and understood that they were not free to mortgage or sell the land they occupied. They were also told and understood that if they voluntarily decided to leave the land for any reason, their land and all improvements would then belong to the UEP. (UEP Pet. at 5A).

4. Some residents did become discouraged and leave the community voluntarily and their improvements then became property of the UEP. (UEP Pet. at 6A).

5. The leaders of the community invited some individuals to leave their homes, and some of these individuals left voluntarily while others were bought out or "prayed out." Those who did not leave of their own accord were allowed to remain (UEP Pet. at 6A).

6. Until recent times, the UEP never resorted to legal action or force to require an occupant of UEP land to leave. (UEP Pet. at 6A).

7. All of the Plaintiffs have built valuable improvements on land to which title is held by the UEP. (Memorandum Opinion, UEP Pet. at 4B).

8. Although verbal arrangements for the use of UEP land were usually made with members of the religious leadership who were also trustee's of the UEP or their agents such as J. Marion Hammon or Edson Jessop, the provisions of the UEP declaration and the amendments thereto were roundly ignored by everyone in the process. (UEP Pet. at 6A-7A).

9. The formalities of the administration of the UEP were ignored, as was the actual language of the trust. Many within the community felt that it would be a indication of lack of faith if the Declaration of Trust were to be obtained and examined. (UEP Pet. at 10A-11A).

10. The Plaintiffs generally assumed that they were members of the UEP automatically, or because they were allowed to live on UEP land or because someone told them that they were a member or for some other reason. (UEP Pet. at 11A).

11. Rulon Jeffs, President of the Trust and of the religious organization now known as the "first ward" has appointed trustees' for the UEP who are not members of the Priesthood Counsel, the traditional governing religious body of "the Work." He has declared the Plaintiffs to be apostates and disassociated them from his religious organization. The "Second Ward," to which most of the

Plaintiffs claim adherence, also contends that it is the true continuation of the Priesthood Work. The trial court repeatedly declined jurisdiction to resolve this religious dispute. (UEP Pet. at 12A).

12. With regard to the plaintiff Cyril Bradshaw, the Court made the following specific findings relevant to his claim for unjust enrichment:

> (a) When Bradshaw moved to the Community, he was told by J. Marion Hammon, that he was a member of the UEP. (UEP Pet. at 17A).
>
> (b) After moving to the area, Bradshaw taught school at extremely low wages. After eight years, J. Marion Hammon gave Bradshaw a UEP lot upon which to build his home (UEP Pet. at 17A).
>
> (c) Bradshaw recalled that in assigning him his lot, J. Marion Hammon told him that he could have the property "forever." (UEP Pet. at 17A).
>
> (d) Bradshaw assumed that his use of the lot was secured because of his membership in the UEP. (UEP Pet. at 17A).
>
> (e) Bradshaw spent considerable money and labor constructing a large home where he raised his family. (UEP Pet. 17A).
>
> (f) Bradshaw was never told that his right to use the UEP lot could be terminated by the trustees. (UEP Pet. at 18A).
>
> (g) Bradshaw paid tax assessments made by UEP agent Truman Barlow to help pay for the property taxes levied against UEP lands by the County. (UEP Pet. at 18A).

(h) Bradshaw was not told that he would be a tenant at will on the UEP lot until after he had already constructed improvements. (UEP Pet. at 23A).

(i) The Court specifically found that Bradshaw conferred a benefit upon the UEP by constructing his improvements, and that the trust clearly acknowledged the benefit as it was aware and encouraged the construction. (UEP Pet. at 29A).

(j) The Court also specifically found that it would be inequitable to allow the UEP to retain the benefit of the improvements constructed by Mr. Bradshaw without compensating him in the event that it chose to remove Mr. Bradshaw from his lot. (UEP Pet. at 30A-31A).

13. With regard to the Plaintiff Connell Bateman, the Court made the following specific findings:

Mr. Bateman has conferred a benefit upon the UEP by constructing valuable improvements on the lot as suggested by Pres. Johnson, the UEP's then presiding officer. The UEP was certainly aware of the improvements and in fact encouraged the construction of them. Having weighed the equities, the Court must determine whether, under the circumstances, it would be unfair for the UEP to keep the improvements without paying for them. The Court is of the opinion that such an outcome would be unjust.

Mr. Bateman was invited to build on UEP land by Pres. Johnson who served as his religious leader and also as the Pres. of the UEP. Pres. Johnson did not tell Mr. Bateman what the terms of the use of the property would be, nor did Mr. Bateman ask. It was only after the

> improvements were underway that the UEP informed Mr. Bateman that he was a tenant at will and could be asked to leave at any time. The UEP knew that there was a Declaration of Trust which would have served to inform Mr. Bateman of the limitations of his use on the property but never brought it to his attention or discussed its terms with him. The UEP must bear the major portion of the blame for the confusion that has ensued. It would be patently unjust to allow the UEP to benefit from that confusion by acquiring a large home almost finished to house another beneficiary. On the other hand Mr. Bateman must share responsibility for some of the confusion since he never made inquiry as to his position on the UEP land or the terms of his use of the land. He simply made assumptions. Mr. Bateman was not able to demonstrate that he has been given any more than the right to use the property during his lifetime for so long as the trust thought wise.
>
> Therefore the Court will award declaratory judgment in favor of Mr. Bateman on the ground of Unjust Enrichment providing for the same relief and subject to the same limitations as that afforded Mr. Bradshaw.

(UEP Pet. at 34A-35A).

14. With regard to the Plaintiff Claude Cooke, the Court made the following specific findings:

> There can be no dispute that Mr. Cooke has made valuable improvements to the property of the UEP with its encouragement and knowledge. The Court now finds that it would be unjust and inequitable to allow the UEP to take the improvements during Mr. Cooke's lifetime

without compensating him for the value of the improvements to the UEP.

The equities in this matter weigh in favor of the plaintiff. Prior to the construction of the improvements on UEP land, Mr. Cooke was never told that he was a tenant at will and could be removed from the land at the whim of the trust. He was never shown the declaration, nor informed of its existence and contents prior to the improvements. He was inexperienced in matters of business and did not even know how land was transferred. He thought that he had been given a UEP lot and the trust did nothing to disabuse him of that notion. The trust must bear the responsibility for the misunderstanding that has arisen about the extent of Mr. Cooke's rights to use the UEP land. Although the Court has found that Mr. Cooke did not act reasonably in building without an inquiry as to his rights, the trust did nothing to inform him of his limitations on this occupancy, even as he was invited and encouraged to build on UEP land and even as the trustees saw the improvements being constructed. The greater portion of the blame lies with the trust.

The Court will enter a declaratory judgment in favor of Mr. Cooke, providing the same relief and subject to the same limitations as that afforded Mr. Bradshaw.

(UEP Pet. at 47A-48A).

15. The trial court made similar findings or incorporated such findings in its ruling as to each of the other Plaintiffs.

16. In addition, the trial court also made the following additional findings in its Memorandum Opinion of September 23, 1996:

> It is important to note that the Court did not place the non-believers in possession of the UEP land. The trust, or its representatives decided who could live on the land and under what circumstances. Unfortunately, the Trust did not make clear to the occupants of the property that their right to stay on the property was limited by various factors, including faithfulness to the same religious beliefs as the UEP's trustees espoused. The occupants have now constructed improvements on the property at considerable expense which would be forfeited if the occupants were required to vacate the UEP's land.

(UEP Pet. at 4B).

C. Facts regarding the free exercise of religion.

In its Petition, the UEP argues by implication and assertion that the trial courts' decision unduly burdens the UEP in its free exercise of religion. Evidence relative to that issue was presented at trial, and was further addressed in the UEP's post-trial Motion to Dismiss. In ruling on that Motion, the trial court stated as follows:

> Defendants take the position that the court's decision granting equitable relief on the grounds of a claim of unjust enrichment is violative of this definition [of a "substantial burden" on the free exercise of religion]. The defendants struggle in specifying, however, and the court fails to see, just how the court has burdened the free exercise of religion within the above stated

definition of those terms. Nothing that the court has done in fashioning an equitable remedy to those who occupy its lands infringes in any way upon the religious practices, beliefs, activities or expressions of adherence of (sic) members of any religious group.

The defendants seem to argue that their right to practice a religious principle called the United Order is impaired by the fact that those who are not members of their faith are occupying land which belongs to a trust administered by leaders of their church. The defendants have presented no evidence in these proceedings to demonstrate that assertion. The evidence does indicate that the United Order is a goal of the defendants' church but that it is not being lived presently nor was it being lived when the plaintiffs were allowed by the trust to occupy UEP land and build improvements thereon. The evidence also was that the trustees have and do allow non-members to continue to reside on UEP land independent of the court's decision. No evidence was presented as to what constitutes the United Order and how the practice of that principle would be impacted adversely by the presence of nonbelievers in the community. The fact that the adherents of a religion may wish to live among others who believe similarly does not mean that they have the right to remove non-believers from their midst nor does the evidence in this case indicate that the defendants' church so teaches. In fact, the evidence is that the defendants' church has taught that those who move onto UEP land and then become estranged to The Work will become discouraged and leave by themselves, without the need of removal by the faithful. Therefore the

> court fails to see that a part of the United Order principle has been burdened by the remedy fashioned by the court.

(UEP Pet. at 4B). The trial court also expressly rejected the UEP's argument that the presence of non-members due to a court order, as opposed to permission of the trust, violates the UEP's free exercise rights. (UEP Pet. at 5B). It further pointed out that since the Judgment allows the UEP to remove the Plaintiffs by paying for the improvements thus acquired by the UEP, it merely creates some additional expense, which does not constitute a substantial burden as a matter of law. (UEP Pet. at 5B, (*citing, Messiah Baptist Church v. City of Jefferson, Colorado,* 859 F.2d at 820)).

ARGUMENT

I. THE TRIAL COURT PROPERLY ADJUDICATED THE PARTIES' COMPETING INTERESTS IN REAL PROPERTY WITHOUT DECIDING MATTERS OF RELIGIOUS DOCTRINE.

Throughout the case, the trial court made every effort not to address issues of doctrine or church polity. In its ruling, the trial court stated as follows:

> The Court has ruled on the legal claims of the parties taking into consideration the religious setting in which the dispute arose but has decided the case using neutral principles of law which have no relationship to the religious disputes in the case, which are not before the Court and which this Court could not decide under the provisions of both the United States and Utah

> Constitutions. The Court has ruled throughout these proceedings that the issues it will address have nothing to do with which ward is the "true" successor to The Work, or like questions. Those are religious issues and are beyond the jurisdiction of this Court.

(UEP Pet. at 97A).

The trial court's reference to "neutral principles of law" follows this Court's express approval of the process by which disputes involving church property are adjudicated based on neutral principles of law. The Supreme Court's most clear statement on this subject was set forth in *Presbyterian Church v. Mary E.B. Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969). That case involved a dispute between an international church organization and two of its local congregations which erupted when the local congregations sought control of the local property. At that time, Georgia law allowed a jury to award the property to the local church upon a determination that the general church had abandoned or departed from the tenets of faith and practice that it held at the time the local church first affiliated with it. *Id.* at 441. The Supreme Court held that a civil court cannot inquire into the doctrinal question of whether a body has adhered to its tenets of faith without intruding into an area forbidden by the first amendment. The Court thus concluded as follows:

> [T]he [First] Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. Hence, States, religious organizations, and individuals must structure relationships involving church property so as

> not to require the civil courts to resolve ecclesiastical questions.

Id. at 449.

The holding in *Mary E.B. Hull* was further elucidated in *Jones v. Wolf*, 443 U.S. 595 (1979). In that case, the lower Court applied neutral principals of law to adjudicate a church property dispute, analyzing in secular terms the documents bearing on the issues of ownership. The Supreme Court approved this "neutral principals of law" approach and noted that "a civil court must take special care to scrutinize the document in purely secular terms," and not to rely on religious precepts in making its determination. *Id.* at 604. The court concluded that this method of resolving church property disputes is ultimately more compatible with first amendment jurisprudence than giving compulsory deference to the position of the religious body. *Id.* at 604-05.

The trial court's resolution of the case at bar under neutral principles of law was appropriate in this case for three reasons. First, determination of property rights did not ultimately depend on any religious doctrine or policy. Although the UEP's attorneys argued at length that UEP ground was sacred and that the mere presence of the Plaintiffs on the land was contrary to religious doctrine, the UEP was unable to produce any witness who would so testify. In fact, the UEP witnesses agreed that if a party refused a request to leave, they were not evicted, but were generally "prayed out" or allowed to remain.

Second, application of neutral principles was essential in order to avoid infringing the religious beliefs of the parties. In its Petition, the UEP implicitly adopts the

premise that the first ward represents the true continuation of the Work and thus has the religious right to expel the apostate Plaintiffs. Had the trial court deferred to the first ward in this manner, however, its decision would necessarily have trampled the religious beliefs of the Plaintiffs, many of whom believe with equal fervor that the second ward is the true continuation of the Priesthood Work. The Court was correct to avoid this whole quagmire by refusing to separate the apostles from the apostates, and by limiting its inquiry to the property rights of the parties under neutral principles of law.

Finally, application of neutral principles was appropriate because both the Declaration of Trust and the Plaintiffs' claims speak in the secular language of the civil law without reference to religious authority. Rather than answering the UEP's invitation to carry out a religious crusade, the trial court merely set out to ascertain the intentions and the conduct of the parties and then impose an appropriate remedy consistent with the equities of the circumstances. The UEP has not identified any instance in which the trial court improperly interpreted church doctrine or interfered in church polity in resolving the dispute.

In essence, the UEP has taken the bold position that it is not subject to judicial authority to impose an equitable remedy because it claims to be part of a church. The United States Constitution was not intended to place churches above the law in this manner. Like all persons – religious or otherwise – the UEP and the FLDS church are subject to the civil law, including the doctrine of unjust enrichment. The UEP cannot claim a religious right to

enjoy benefits produced by others without due compensation where equity dictates otherwise. Plaintiffs submit that the trial court's application of neutral principles of law was entirely appropriate in this case.

II. THE U.E.P. FAILED TO PROVE AT TRIAL THAT RECOGNIZING PLAINTIFFS' EQUITABLE INTEREST IN THE PROPERTY WOULD BURDEN THE FREE EXERCISE OF RELIGION.

At its heart, the UEP's Petition is founded on the assertion that the trial court's order infringed the UEP's free exercise of religion. In order to prove a violation of the free exercise clause, however, the UEP must first demonstrate that the trial court's action would substantially burden the UEP or its members in exercising their religion. *See Werner v. McCotter*, 49 F.3d 1476, 1479 n. 1 (10th Cir. 1995).

After hearing all of the evidence and the arguments of counsel, the trial court found that the UEP had failed to demonstrate a significant burden on the free exercise of religion. That finding of fact was effectively placed beyond the power of any reviewing court when the UEP opted not to order a transcript of the trial. Without a transcript, a reviewing court cannot assess the sufficiency of the evidence supporting any finding, and thus, this Court is bound to accept the trial court's findings as true.

III. THE UTAH SUPREME COURT PROPERLY RECOGNIZED THAT STATES HAVE A COMPELLING INTEREST IN ALLOWING PARTIES ACCESS TO THE JUDICIAL SYSTEM.

The Petition does not directly address the Utah Supreme Court's conclusion that even if the Judgment were a substantial burden on the UEP's religious beliefs, it nevertheless serves the compelling interest of allowing all parties – religious or non-religious – access to the judicial system. In that regard, the Utah Supreme Court wrote as follows:

> If we were to accept the UEP's claim that we should refuse to resolve the claimants' case solely because of the assertion that Utah's courts cannot resolve disputes between religious entities, that refusal would deny this fundamental right [of access to the courts] to the claimants. In addition, such a refusal of a remedy alone might constitute an action violative of state or federal Establishment and Free Exercise Clauses.

(UEP Pet. at 29C). The trial court thus concluded that even if the compelling interest test were deemed to apply, the UEP's claim would fail because "by resolving the dispute between the UEP and claimants, the trial court furthered the compelling state interest in keeping the courts open." (UEP Pet., at 30C).

While this aspect of the Utah Supreme Court's decision was not directly addressed in the UEP's Petition, it is central to any defense the UEP might advance based on the free exercise clause. States have a compelling interest to provide open courts for judicial resolution of disputes

between all parties. The primacy of that interest is particularly manifest in this case, where the UEP claims a religious right to call the Plaintiffs apostates and drive them from their homes.

IV. JUDICIAL RESOLUTION OF PROPERTY DISPUTES BETWEEN RELIGIOUS PARTIES DOES NOT VIOLATE THE ESTABLISHMENT CLAUSE.

Part III of the UEP's Petition argues that the trial court cannot possibly resolve the remaining three claims for breach of duty, accounting, and distribution of the trust without entangling itself in religion in a way that would violate the establishment clause. Review is not warranted under the establishment clause for two reasons. First, the inquiry is premature, since these claims have not yet been addressed in the trial court. Plaintiffs' claims for breach of duty, accounting, and distribution were dismissed by the trial court on the basis that the UEP was a charitable trust, and Plaintiffs therefore did not have standing as beneficiaries to challenge trust administration. The Utah Supreme Court reversed that holding, ruling as a matter of law that the UEP was a private trust and returning the matter to the trial court. Since these claims have not yet been presented to the trial court or ruled upon in any way, review on Certiorari is premature, as this Court could offer nothing more than an advisory opinion.

Second, the establishment clause does not preclude adjudication of Plaintiffs' claims under neutral principles of law. Plaintiffs submit that if the remaining claims are presented to the trial court, they may be adjudicated

based on neutral principles of law without adjudicating religious doctrine or polity. The UEP Declaration of Trust is a written document outlining the duties of the trustees in familiar legal terms. Applying neutral principles of law to ascertain the rights of the parties will neither endorse a religion nor entangle the court with religious issues it cannot decide. Where the UEP took full advantage of the civil law when it formed the UEP as a common-law trust, it cannot now be heard to claim that the UEP should not be subject to the civil law in its administration.

CONCLUSION

The trial court rejected the UEP's claim for religious immunity under the First Amendment on the grounds that the UEP failed to produce evidence sufficient to demonstrate any burden on its exercise of religion and that even if there were a burden, the Plaintiffs fundamental right and the states compelling interest in opening the courts to all parties for redress of grievances. The Utah Supreme Court carefully reviewed the findings and rulings of the trial court and concluded that the Judgment did not infringe the UEP's free exercise rights. Plaintiffs submit that nothing in the Petition challenges the fundamental bases for the Utah Supreme Court's opinion,

and review on a Writ of Certiorari is therefore unwarranted.

DATED this 21st day of April, 1999.

Respectfully submitted,

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Supreme Court, U.S.
FILED
MAY 6 1999
OFFICE OF THE CLERK

No. 98-1334

In The Supreme Court of the United States

October Term, 1998

FUNDAMENTALIST CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, et al.,

Petitioners,

vs.

CYRIL BRADSHAW, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF UTAH

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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May 5, 1999

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I. PLAINTIFFS' ERRONEOUS ARGUMENTS EXEMPLIFY CURRENT CONFUSION ABOUT THE NEUTRAL PRINCIPLES EXCEPTION TO THE SETTLED CONSTITUTIONAL RULE AGAINST JUDICIAL INTERPRETATION OF RELIGIOUS DOCTRINE.

The misstatement and misapplication of the neutral principles doctrine in this case are typical of errors repeatedly committed by lower courts attempting to understand and apply this doctrine in light of the constitutional prohibition on judicial interpretation of religious doctrine.

A. *"Neutral Principles of Law" Is Not Synonymous with "Religiously Neutral, Generally Applicable Laws."*

Plaintiffs argue that the trial court applied "neutral principles of law" because it relied upon a "religiously neutral, generally applicable law." This confusion of precedent has become common in the lower courts since this Court's decision in *Employment Division v. Smith*, 494 U.S. 872 (1990). *See* cases cited in Petition, at 20 n.13. Without any analysis or authority, these cases assume that a law which is "religiously neutral" and "generally applicable" under *Smith* is therefore a "neutral principle of law" under *Jones v. Wolf*, 443 U.S. 595 (1979).

The trial court here has repeated this error. Concluding that the law of unjust enrichment is a neutral and general law, the trial court determined that it could apply this law to the property dispute between plaintiffs and petitioners so long as it excluded religious questions from the equitable balance.

The "neutral principles of law" exception to the rule against judicial interpretation of religious doctrine, however, only allows judges to determine ownership rights in disputed

church property by reference to legal documents that commonly evidence title, such as deeds, local church charters, general church constitutions, and state statutes. *Jones*, 443 U.S. at 604; *Maryland & Va. Churches v. Sharpsburg Church*, 396 U.S. 367, 368 (1970).

Had the trial court followed the neutral principles exception in this case, it would have held for petitioners, because the trial court itself found that the UEP trust documents and all other evidence clearly and unambiguously showed that title to trust property and all improvements thereon was held by the trust, which gave to the trustees exclusive authority to manage and deal with such property and improvements. *See* Appendix A to Petition, at 3A-11A.

By going beyond the objective meaning of the relevant documents and awarding life estates to the plaintiffs on a theory of unjust enrichment, the trial court violated the neutral principles exception to the rule against judicial interpretation of religious doctrine. Even if it is assumed that the law of unjust enrichment is a neutral and general law within the meaning of *Smith*, it is neither neutral nor a principle of law within the meaning of *Jones*. Unjust enrichment is not a rule of law at all, but a principle of equity which requires a balancing of considerations of justice advanced by each side. When those considerations of justice include religious beliefs or practices, the equitable balance cannot be accomplished without assigning weight (or lack thereof) to these beliefs or practices. This, in turn, would require that courts rule on the meaning and importance of these beliefs and practices, in violation of the constitutional rule against judicial interpretation of religious doctrine. Yet, if the court decides to avoid interpreting religious doctrine by excluding the meaning and importance of religious beliefs and practices from the equitable balance, the balance is no

longer equitable. Instead, it has been skewed against the party advancing the religious beliefs and practices, and thus is not neutral.

In this case, one of the important equitable considerations was the corrosive effect on the FLDS Church's efforts to build a community of faith that would result from dissidents living in the midst of the church on the consecrated property of the UEP. Had the trial court relied on this consideration, it would have had to make a judgment about the content and requirements of FLDS theology, and the extent to which allowing the dissidents to remain on UEP property would have affected the ability of the church and its members to create the "Kingdom of God on Earth" as required by their religion. By ignoring this crucial consideration under the guise of religious "neutrality" the trial court biased the balance of equities against the church and the UEP. *See Lyng v. Northwest Indian Cemetery Protection Ass'n*, 485 U.S. 439, 449-50 (1988).

Petitioners do not argue that they are above the law, but only that religious judgment is inherent in the application of equitable remedies to religious property disputes. The trial court should either have confirmed the UEP's title to the property and improvements under the neutral principles exception, or abstained from rendering any decision at all in accordance with the constitutional prohibition on interpreting religious doctrine.

B. *The Application of an Equitable Remedy in a Church Property Dispute Unavoidably Violates the Neutral Principles Exception.*

At no point in their petition do petitioners claim that the remedy awarded by the trial court burdens their rights under

the free exercise clause of the First Amendment. Petitioners argue only that (i) the use of equitable remedies in church property disputes necessarily violates either the constitutional prohibition on judicial interpretation of religious doctrine or the neutral principles exception thereto, Petition, at 11-19; (ii) a neutral and general law cannot be applied to resolve a church property dispute when such application would entail judicial interpretation or valuation of religious doctrine, *id.* at 19-22; and (iii) the establishment clause requires that courts refrain from applying neutral and general laws to church property disputes when refraining will reduce church-state entanglements, *id.* at 22-28. Whether or not the trial court's remedy burdened FLDS free exercise rights is irrelevant.

Nevertheless, the fact that the trial court felt compelled to rule that its equitable remedy did not burden FLDS beliefs betrays the court's entanglement in questions of religious doctrine. The trial court's reference to free exercise burdens is yet another telltale symptom of the confusion that exists between the *Jones* and *Smith* rules.

In *Smith*, this Court held that the free exercise clause did not grant relief to persons whose religious beliefs or practices were burdened by religiously neutral, generally applicable laws. *Jones*, by contrast, is not about free exercise burdens at all; rather, *Jones* seeks to delineate when secular courts are competent to resolve disputes over the ownership of church property. In this case, the focus is not on whether the trial court's remedy burdened the free exercise rights of members of the FLDS church, but rather whether this remedy involved the trial court in constitutionally prohibited interpretation and evaluation of FLDS doctrine.

The trial court's effort to show that its remedy did not burden the religious beliefs of the FLDS Church and its members confirms the extent to which the trial court entangled itself in determinations and interpretations of FLDS doctrine. Ignoring the obvious distinction between friendly strangers and hostile dissidents, the trial court held that allowing dissidents to remain on UEP property in the midst of the FLDS community would not impede the efforts of the church and its members to live their religion, because the church had occasionally allowed nonmembers to live on UEP property. *See* Appendix B to Petition, at 3B-5B. In so doing, the trial court substituted its judgment for that of church leaders about what FLDS doctrine requires for the creation and maintenance of a consecrated community of faith. Not only had this Court prohibited this kind of judgment in its church property decisions,[1] this Court's rulings under the free exercise clause likewise emphasize that this is precisely the sort of evaluation that courts are not competent to render.[2]

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[1] *See, e.g., Jones*, 443 U.S. at 602 ("[T]he First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice. As a corollary to this commandment, the Amendment requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization."); *Presbyterian Church v. Hull Church*, 393 U.S. 440, 449 (1969) ("First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice.").

[2] *See Smith*, 494 U.S. at 887 ("What principle of law or logic can be brought to bear to contradict a believer's assertion that a particular act is 'central' to his personal faith? . . . Repeatedly and in many different contexts, we have warned that courts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim.").

II. THE ACCOUNTING ORDERED BY THE UTAH SUPREME COURT WILL NECESSARILY REQUIRE JUDICIAL RULINGS ON THE MERITS OF FLDS BELIEFS AND PRACTICES.

The accounting ordered by the Utah Supreme Court illustrates yet again how misuse of the *Smith* rule entangles courts in the interpretation of religious under the guise of neutrality.

Respondents maintain that because the UEP trust document is susceptible of secular interpretation, this Court should allow the trial court to attempt to apply the document in a secular manner in connection with the accounting ordered by the Utah Supreme Court.

The very idea that the trial court might somehow conduct an accounting of the trustees' administration of the UEP without ruling on questions of FLDS doctrine is absurd. The trustees are all leaders of the FLDS Church, tasked with managing the trust to lead the adherents toward the religious United Order. The trial court itself expressly found:

> [Church leaders] often preached that the purpose of the UEP was to advance the group toward the United Order, which was an economic concept taught in the scriptures held sacred by the Work. To accomplish this goal the UEP was intended to provide a means for all real property of the religious group to be held in common and for its use to be managed by a benevolent and inspired group of God fearing leaders.
>
> . . .

> The leadership of the Work also taught that the UEP constituted a communal effort to build up the Kingdom of God on Earth by developing a community for the adherents to occupy.

Appendix A to Petition, at 5A-6A.

An accounting will require judicial evaluation of whether actions by the trustees in dealing with UEP property were reasonable in light of the duties (including the fiduciary duties) owed by the trustees. This judgment of reasonableness will have to be made in light of the FLDS beliefs that were the reason for formation of the trust in the first place. Indeed, to evaluate the trustees' trust management decisions as other than an effort to put into practice their religious belief in the United Order would be grossly unfair to them.

The law of trusts cannot be "neutrally" applied in this context. Since the purpose of the UEP trust is to "build up the Kingdom of God," the trial court will have to evaluate the trustees' management decisions on the basis of whether or not these decisions in fact built up the Kingdom of God. This the trial court is constitutionally prohibited from doing under any circumstances.

III. THIS CASE PRESENTS AN APPROPRIATE FACTUAL SETTING FOR DISCUSSION AND CLARIFICATION OF THE "NEUTRAL PRINCIPLES" DOCTRINE.

The trial court made extensive and useful findings regarding the factual setting this case presents.[3] Plaintiffs do not, and indeed cannot, dispute that the setting in which this case arose was a religious one. For example, the trial court concluded as to Mr. Bradshaw:

> [H]e went to Short Creek, taught school, engaged in various commendable religious works and activities,

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[3] Plaintiffs have provided this Court with a statement of the facts which is not supported by the trial court's decision. While petitioners believe that the issues presented are legal and not factual, the liberties taken by plaintiffs create a factual impression not intended or found by the trial court. For example, the trial court found with regard to plaintiff Cyril Bradshaw:

> When Bradshaw moved to the community, he claims that he was told by J. Marion Hammon when he moved to the area that he was a member of the UEP. He presented no evidence that the trustees had taken the action required under the provisions of the Declaration to make him a member. (Petition, at 17A)

Plaintiffs modify this finding in their Response, as follows:

> When Bradshaw moved to the Community, he was told by J. Marion Hammon, that he was a member of the UEP. (Response to Petition, at 8.)

Further, plaintiffs assert that Bradshaw was told he could have the property "forever." (Response to Petition, at 8.) The trial court rejected this claim:

> The plaintiffs herein, including Mr. Bradshaw, could not have reasonably relied on the off hand, and abbreviated comments to which they point to create a right of ownership or perpetual use in view of all they knew about the operations of the UEP. The evidence does not support this claim. (Petition, at 22A.)

taught school for a very low wage and built a house on a UEP lot because of the depth of his religious convictions. (Petition, at 19A.)

The trial court's strong findings that this case arose in the context of religious practice provide this Court with an appropriate factual setting in which to examine and clarify the "neutral principles" doctrine, and to provide guidance as to when neutrality may nevertheless create impermissible entanglement between courts and religion.

CONCLUSION

For the foregoing reasons, petitioners respectfully request that this Court issue a writ of certiorari to the Utah Supreme Court.

Respectfully submitted,

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wanted and that he assumed that meant forever. However he knew that his right to use UEP property was subject to limitations and he had already lost one house built on UEP property. He never tried to determine the true limitations and conditions on his occupancy of the land, although the recorded declaration was available and there is no evidence that his inquiries would not have been truthfully answered, had he made them. Mr. Dockstader cannot claim, even from the words spoken by J. Marion Hammon, according to the testimony, that he was promised perpetual use of the land. No promise was made as to the use of the land by his heirs and he knew, both from prior experience and from the general information available in the community that if he stopped using the property the UEP would take the land and its improvements. Mr. Dockstader sought and obtained the use of UEP land but he cannot now claim that the act of charity extended to him by the UEP somehow ripened into full ownership based upon the casual comment he attributes to J. Marion Hammon.

Unjust Enrichment

Mr. Dockstader has built valuable improvements on the UEP's land with the permission and encouragement of the UEP. If the UEP were to terminate his use of the home he has constructed, the trust would be benefited to the extent of the value of the improvements to the trust. The Court is of the opinion that the equities weigh in Mr. Dockstader's favor and that it would be unjust to allow the trust to simply take the improvements, during Mr. Dockstader's lifetime, without paying compensation for the value thereof.

Mr. Dockstader sought permission to occupy UEP ground for the purpose of building a home thereon. He and the UEP

knew that he was expected to build on the land. He was told that he could occupy the land for as long as he wanted, which could reasonably have created in his mind an expectation that he would be allowed to live out his days on the land so long as he did not sell the land, or mortgage it or abandon its use. He acted unreasonably in relying upon that expectation without making any inquiry as to his true status on the property but the UEP must bear the greater responsibility for the situation. The UEP made no effort to make clear that Mr. Dockstader would be a tenant at will and could be removed on the whim of the trustees. The UEP was engaged in a large scale program of inviting adherents to The Work to build on UEP property. As part of that program it was the trust's responsibility to make clear that the improvements could be seized by the trust at any time. If the UEP now acts to revoke Mr. Dockstader's use of the land, during his lifetime, it must compensate him for the value of the improvements he has built thereon.

The Court will enter a declaratory judgment providing relief to Mr. Dockstader in the same form and subject to the same limitations as stated for the previous plaintiffs.

T. David Dockstader

In the Amended Complaint this plaintiff was named as a claimant only on the claims for implied contract, constructive fraud, estoppel and unjust enrichment. At the conclusion of the plaintiffs' evidence the Court dismissed, on motion of the defendants, the claims of this defendant for implied contract and estoppel. Mr. Dockstader's improvements are located on property in Arizona. The Court will now examine the remaining claims of this plaintiff.

Mr. Dockstader was born into The Work and moved to Short Creek at the age of 2. He remembers hearing about the UEP in the mid 1950's. He was never told how to become a member or that he was a member. He assumed he became a member when he was allowed to live on UEP land because he had been a faithful adherent to The Work. He was aware that there was a written declaration of trust but he never asked about its contents, or sought to read it because it wasn't of concern to him. He has spent lots of time and effort over his life donating time, money and effort to The Work as part of his religious practices. He made no claim for reimbursement for those contributions.

He was listed as a beneficiary of the UEP at one time. However, he was never promised membership or ownership of the assets of the trust. When he obtained use of UEP ground he was living in Salt Lake about 1968. He had some changes in his work situation and decided to go back to Short Creek with his family. He approached J. Marion Hammon and Pres. Johnson at different times and explained his plans. Each said that he could go ahead. His plan was to move in with his mother who lived in a home on UEP land and to build a better home for his mother. There was no discussion of the terms of his use of the land but he knew that he could not sell, mortgage or abandon the property. In 1961-2 he had begun construction of a previous home on UEP land. He got the basement done before he decided not to proceed. He turned the land back to the UEP never asking, or expecting, compensation for the improvements he had built.

He was never told that he could stay for any specific length of time or that he could, or couldn't, be asked to leave. He never checked into those questions. He has now build several improvement on the UEP land.

Constructive Fraud

The Court finds that Mr. Dockstader has failed to prove a claim for constructive fraud. There was no evidence presented that he considered himself in a confidential relationship with the trust or its agents or that he was subjected to any extraordinary influence in deciding to build on UEP ground. In fact he made the decisions and simply asked the UEP's agents to give him the go ahead. He made his own judgments and cannot now blame the trust for the outcome.

Unjust Enrichment

Mr. Dockstader has now constructed valuable improvements on UEP land with the consent and approval of the UEP. Since neither party took steps to prevent this situation, and since the UEP was engaged in a wide spread program of inviting people to build on UEP ground, and since the UEP allowed the construction to proceed without making it clear to the occupants that they could lose the use of the land upon the whim of the trustees, the Court finds that it would be unjust to allow the UEP to simply remove the occupants without paying compensation to them for the value of the improvements. For these reasons and those previously stated as to other plaintiffs, the Court will enter a declaratory judgment in favor of Mr. Dockstader providing the same relief and subject to the same limitations as was stated for the previous plaintiffs discussed.

Marko J. Dutson

Mr. Dutson was named as a plaintiff for all six claims tried to date. At the conclusion of the plaintiffs' evidence the

Court dismissed the claim for implied contract as it relates to his home in Utah and his office in Arizona, as well as the occupying claimant claim as it relates to his office in Arizona. The Court will examine the remaining claims.

Mr. Dutson lives on UEP land in Utah and occupies an office on UEP land in Arizona. His father was associated with The Work and Mr. Dutson joined The Work in the early 1960's. During 1967-68, he built a home on UEP land and moved into in 1968. When he moved to Short Creek he learned about the UEP and its trustees. He later learned there was a written trust document but did not see a copy until late 1970's or early 1980's.

He was never told how one became a member of the UEP or that he was a member. He considered himself a member from the time he moved onto UEP land. He produced no proof that the UEP ever made him a member or promised him any interest in the assets of the trust.

When he decided to move to Short Creek he contacted Pres. Johnson and asked to be allowed to build a home on UEP land. Pres. Johnson told him to get hold of Edson Jessop for a lot and to go ahead a build a home. He testified that he then went ahead with the construction. He also testified that at a meeting sometime later Pres. Johnson told him that he could use the land as a home for himself and family "for as long as you want it".

After he moved to Short Creek, Mr. Dutson decided that the area needed a cobbler. He spoke to Pres. Johnson about it and got permission to get training in that area, which he obtained. He then went back to Pres. Johnson and asked for land to build a shop. He was assigned the use of the lot his

office now occupies. He build the office building in 1979 or 1980.

Mr. Dutson knew that the improvements were on land he did not own. He knew that he could not sell, mortgage or abandon the land or improvements or they would revert to the UEP. In 1977 he signed a Certificate of Understanding at the request of the leaders in the area in which he agreed to the UEP's terms for occupancy as stated therein (see Trial exhibit P-34). He never made inquiry into his status on UEP land.

Express Contract

Mr. Dutson has failed to prove a claim for breach of an express oral contract for the same reasons discussed with regard to previous plaintiffs. Nothing said to Mr. Dutson creates a clear, definite and enforceable contract which provides him the ownership of the land he occupies or its use in perpetuity. He understood his situation and that the improvements he built would someday go to the UEP. He received no promise as to his right to use the land under his home until the home had already been constructed. The building of the home cannot therefore constitute consideration for the contract nor can it operate to take the contract out of the Statute of Frauds since the construction is not clearly referable to that statement. By the time Mr. Dutson had built his office he had already signed a document agreeing that the improvements on UEP land belonged to the UEP. He was never made promises about the time he would be allowed to occupy the office, in any case. For these reasons, and those stated with regard to the Bradshaw claims, the Court denies relief on the contract claims.

Negligent Misrepresentation

Mr. Dutson has failed to prove his claim of negligent misrepresentation. He has failed to prove that he constructed improvements on UEP land in reliance upon representations, or omitted information. He simply chose to build on UEP land for religious reasons and cannot now complain of the lack of wisdom in his own decision. He has failed to prove, if there was reliance, that it was justifiable or reasonable or that he took efforts to determine his rights and status on UEP land. Accordingly, for these reasons and those mentioned with regard to previous plaintiffs, this claim fails.

Constructive Fraud

Mr. Dutson has failed to prove his claim for constructive fraud as he has failed to prove that his decision to build either the home or the shop was the result of a confidential relationship in which he was subjected to extraordinary influence which overcame his free will. Mr. Dutson's decision to build on UEP land was his own, not the result of his reliance on information, or the lack thereof, from a confidential relationship and the exertion of extraordinary influence over him. No such relationship was claimed or proved, nor was there evidence of undue influence.

Occupying Claimant

Mr. Dutson's claim under the Occupying Claimant Statute of the State of Utah fails for the same reason set out previously for Mr. Burnham. He build on land which he knew was not his own.

Unjust Enrichment

For the same reasons stated as to previous plaintiffs herein the Court finds in Mr. Dutson's favor on his claim of Unjust Enrichment. Again the UEP must bear the majority of the blame for the confusion as to the status of those who were allowed to build improvements on the land without clear and definite instruction as to what their status would be.

The Court will enter a declaratory judgment providing to Mr. Dutson the same relief and subject to the same limitations as that provided to the previous plaintiffs.

George Ray Hammon

Mr. Hammon was named as a plaintiff as to only the claims for implied contract, constructive fraud, estoppel and unjust enrichment/occupying claimant. The land occupied by Mr. Hammon is in Arizona. After the presentation of the evidence for the plaintiffs the Court granted the defense motion to dismiss in part and dismissed all claims for this plaintiff except constructive fraud and unjust enrichment. The Court will now examine the remaining claims.

Mr. Hammon was born into The Work, the son of J. Marion Hammon. He has lived most of his life in the Short Creek area. He first learned of the UEP in the 1960's. He knew that the trustees were members of the priesthood council, including his father. He knew then that there was a written trust document and that it was recorded on the public records but he did not actually see it until the mid 1980's. He never heard any discussion of the contents of the Declaration. He did not know, prior to reading the Declaration, how one became a member of the UEP although he assumed he

gained membership when he received use of the "Hildale home" in the mid 1970's. He was named a beneficiary of the trust (see trial exhibit P-3). He thought the UEP owned assets besides land but no one ever told him that he was to be part owner of the assets of the trust.

Mr. Hammon occupied the "Hildale home" on UEP property for many years. He now resides on another piece of property in Arizona. Mr. Hammon contacted Pres. Johnson in the fall of 1973 and asked for permission to build his current home on UEP property. He was given permission but there was no discussion of the terms of his occupancy. He has now completed substantial improvements to the property and has occupied the home thereon since 1985. He thought that he would be allowed to remain in the home as long as he was true to his religion and didn't try to sell, mortgage or abandon the property. He knew he did not own the land. He did not know that he could be asked to leave by the trustees or that he could be forced off the land. He made no inquiry as to his rights or status on UEP land.

Constructive Fraud

Mr. Hammon has failed to prove, by clear and convincing evidence, that he acted in building his current residence because of his involvement in a confidential relationship and the application of extraordinary influence to overcome his own will. He sought permission to build on UEP land and it was granted. He cannot now fault his benefactor for the results of his own decision.

Unjust Enrichment

The Court finds that the elements of unjust enrichment have been proven in this case for the same reasons cited previously with regard to other plaintiffs. The Court will enter a declaratory judgment providing the same relief and subject to the same limitations as provided previously to other plaintiffs.

Jacob LeGrand Hammon

Mr. Hammon was named as a plaintiff as to all six of the causes tried to date. At the close of the plaintiffs case the Court granted a defense motion in part and dismissed this plaintiff's claims for implied contract and occupying claimant (Arizona property). The Court will now examine the remaining claims.

Mr. Hammon was born into The Work, the son of J. Marion Hammon. The Court cannot afford full credibility to the testimony of Mr. Hammon as he was contradicted in several particulars by statements he had previously made under oath, such as the time period when he first read the trust Declaration. The Court heard the following testimony from Mr. Hammon.

He stated that he first heard of the UEP in his youth and that he was aware that there was a written declaration. He first testified that he had not seen the Declaration until 1985, after he had constructed improvements on UEP land. However he was confronted by deposition testimony in which he stated that he read the Declaration of Trust within two weeks after he was given permission to build on UEP land and before he began construction. He then explained

that he had in fact seen the document before the house was built but did not care to read it at that time. He claimed he first read the document after the home was built.

He testified further that he understood that he did not own the land he built on, even though he thought it had been "given" to him. He knew that the improvements would belong to the UEP if he left the property. He did not know that he could be asked or forced to leave. He knew he could not sell or mortgage the property. He did not realize that he was using the land at the pleasure of the trustees.

He testified that Edson Jessop told him that he was "investing in his future" by working on religious projects. He was never promised any particular earthly reward, nor did he make further inquiry. He was never told how one becomes a member of the UEP or that he had been voted a member by the trustees. He testified that at one time he was told by Edson Jessop that he was a member but he was never promised any interest in the assets of the trust based on that membership.

He testified that when he was assigned a lot, Edson Jessop told him that he could have the lot for as long as he wanted and even give it to the children. He further testified that Edson told him if he got convicted of a felony he would lose the use of the lot but his wife and children could have it.

Express Contract

The Court finds that Mr. Hammon has failed to prove an express contract under the evidence in this case. The Court finds the plaintiff's testimony to be difficult to believe in view of the vast body of evidence in this case indicating the

usual procedures and statements made by Edson Jessop to those he was assigning lots. It is hard to believe that he would make promises of the type Mr. Hammon claims, including the representation that Mr. Hammon could pass the use of the land to his children, even if he committed a felony which would disqualify him from possessing the land himself. This testimony flies in the face of testimony from this plaintiff's own father that he never gave another the right to occupy UEP land forever. Even if the Court were to accept the testimony of Mr. Hammon at face value, it still does not create an enforceable oral contract giving in Mr. Hammon the perpetual right to occupy UEP land. Mr. Hammon was well aware that there were limitations on the right to use the land and that there was a written trust declaration defining the powers of the trustees to withdraw benefits extended by the trust. He knew he was not being offered ownership of the land. He was being given the right to use the land by permission of the trust. He also knew that Edson Jessop was not a trustee and that the trustees would have to vote to extend such benefits to him.

Negligent Misrepresentation

The Court finds that Mr. Hammon has failed to prove his claim for negligent misrepresentation for the same reasons stated as to previous plaintiffs. Mr. Hammon could not reasonably rely on statements made by Edson Jessop when he knew that there were other terms and conditions governing his use of the land and that there was a written document containing information defining, in part, his right to use the land. Mr. Hammon was never promised that he could look to the UEP to provide for his security or that he would be a co-owner of the trust assets or that he could only lose his home if he left it. He did not act in ignorance of the

existence of a written declaration of trust, as he had seen it prior to building and therefore knew, or should have known, that his rights on the property could have been withdrawn at any time by the trustees.

Constructive Fraud

The Court finds that Mr. Hammon has failed to prove his claim for constructive fraud for the reasons stated as to previous plaintiffs. His relationship with Edson Jessop was not a confidential one within the meaning of the law of this claim, nor was he subjected to extraordinary influence or persuasion to induce him, against his freely exercised will, to build on UEP property. The evidence clearly indicates that he sought permission to do just that, and was successful. If it was a bad idea, he must bear the blame for the outcome, not his benefactor.

Unjust Enrichment

The Court finds that Mr. Hammon has proven the elements of this claim and that the equities weigh in his favor for the reasons stated as to previous plaintiffs. The Court will enter declaratory judgment providing Mr. Hammon with the same relief, and subject to the same limitations, as was provided to the previous plaintiffs.

Merrill Harker

Mr. Harker was named a plaintiff in the Amended Complaint on the claims for implied contract, constructive fraud, estoppel and unjust enrichment/occupying claimant. At the close of plaintiffs' case in chief, and on defendants' motion, the Court dismissed all this plaintiff's claim except

constructive fraud, unjust enrichment and occupying claimant. The Court will now examine the remaining claims.

Mr. Harker resides on UEP property in the State of Arizona. He associated himself with The Work in 1969 at the age of 18-19. He moved to Short Creek in 1966. He first heard of the UEP around 1960. He saw the Declaration in 1980 for the first time. He knew that the Declaration existed since 1960 but did not know that it had been recorded. He never sought to read the Declaration prior to building on UEP land, nor did he ever hear its contents discussed. He was never told how one becomes a member of the UEP nor was he promised ownership of the assets of the trust. He was named as a beneficiary of the trust at one time on recorded documents. He assumed he was a member of the UEP from the time he moved onto UEP land but he could produce no evidence that the trust had voted him a member.

In 1967-68 he approached J. Marion Hammon about getting a lot to build on. He had previously scouted the area and selected a lot to occupy. He so informed Mr. Hammon. He was directed to get together with Edson Jessop and did so. Edson helped him lay out the comers of the lot. He has now constructed improvements on the land. He knew as he took possession of the lot that it was not his land, that it belonged to the UEP, that he could not sell, mortgage or abandon it. He assumed he would be able to stay as long as he wanted to but he received no such promise. No one ever told him what would happen if he fell out of harmony religiously with the trustees, nor did he inquire.

Constructive Fraud

The Court finds that Mr. Harker has failed to prove this claim. There is no showing of the elements of that claim, including a showing of a confidential relationship and the exercise of extraordinary influence. For these reasons and those previously stated regarding the similar claim of other plaintiffs the Court denies relief on this claim.

Unjust Enrichment

The Court finds that Mr. Harker has met the elements of this claim and that the equities weigh in his favor for the reasons stated as to previous plaintiffs. The Court will enter a declaratory judgment providing the same relief and subject to the same limitations as provided to the previous plaintiffs and for the same reasons.

Occupying Claimant

Upon examining the facts in this case, it is apparent that the occupying claimant statute has no application to Mr. Harker as the land he occupies is in Arizona. However, his claim would be subject to the same defects identified by the Court in denying the claim of Mr. Burnham hereinabove.

James Michael Pipkin

Mr. Pipkin was named as a plaintiff on all six of the claims tried to date. At the close of the plaintiffs' case in chief the Court dismissed only the claim for implied contract. The Court will now discuss the remaining claims.

Mr. Pipkin occupies UEP land in Utah. He was first introduced to The Work in 1959 as a child. In 1960, while in high school, he moved to Short Creek. He has resided there since except for brief periods of absence.

He first heard of the UEP in 1962 in a religious meeting. One of the speakers mentioned it briefly. He later (about 1963) learned that J. Marion Hammon was the agent for the UEP although he didn't know that at the time he discussed going on a mission. He didn't know about the trustees until 1983. He first saw the Declaration in 1982 and tried to read it but didn't understand it. He never knew how one becomes a member of the UEP.

He had many dealings with both J. Marion Hammon and Leroy S. Johnson and developed great trust and confidence in them as his spiritual and temporal advisors. In 1963 he approached J. Marion Hammon about going on a mission for The Work. He had heard an invitation extended to those completing their schooling at the Colorado City Academy by J. Marion Hammon and Pres. Johnson. He was accepted as a missionary and assigned to work with Edson Jessop initially. He then asked J. Marion Hammon, "What is in this for me?" He testified that Mr. Hammon told him that his reward would be that he would be "given" a lot and a young wife. He then undertook the mission and made considerable contributions in cash and labor to The Work.

When he returned to Short Creek from the military in 1967, he met with J. Marion Hammon who said, "You've served an honorable mission and I'd like to welcome you into the United Effort Plan." He could produce no evidence that the trustees had voted him a member of the UEP but he

was named a beneficiary of the UEP in recorded documents. He was never promised any interest in the assets of the trust.

In October, 1967, he met with J. Marion Hammon in his home and he testified that Mr. Hammon said, "I want to complete my promise and give you a lot to build a home on. Go see Edson. " He had already been given a wife by the time of this conversation. He and Edson Jessop picked out his lot and he was told to fence it, build on it and live on it as long as he wanted.

He has now built improvements on the lot which he occupied in about Jan. 1969. Prior to the improvements he was never told that he was a tenant at will or that he did not own the lot. He claimed he did not know how land was transferred but he did know that he would lose the lot and the improvements to the UEP if he stopped using the lot. He was never told that he could use the lot forever or for any other specific period of time. He never asked about the terms of his use of the lot, or whether he owned it or not.

Express Contract

The Court finds that Mr. Pipkin has failed to prove his claim of the existence of an express oral contract allowing him perpetual use of the UEP land he now occupies, or that he was a co-owner of the assets of the UEP trust, or that the UEP would provide those benefits listed in paragraph 16(c) of the Amended Complaint. Mr. Pipkin never claimed that he was expressly promised anything except that he would be given a UEP lot to build on and a young wife. He received both. Nothing in the conversation addressed the terms and limitations on his use of the property although he was aware that some limitations existed and that the lot would not be his

free of any claim by the trust. The conversations he held with J. M. Hammon did not contain terms about the duration of the use sufficiently clear and definite to be enforceable by this Court. Mr. Pipkin assumed that he had the perpetual use of the lot but Mr. Hammon never made that promise.

The Court is unpersuaded that Edson Jessop would have promised that Mr. Pipkin could use the lot for as long as he wanted. The evidence of Edson Jessop's practices in assigning lots is contrary to this assertion. In addition there has been no evidence presented that Mr. Jessop had authority to speak for the trust. The right to use a lot perpetually would have to be granted by the trustees or the President under the Declaration.

For these reasons, and those stated in the discussion of the claims of Mr. Bradshaw, the Court denies relief on this claim.

Negligent Misrepresentation

The Court finds that Mr. Pipkin has failed to prove his claim for negligent misrepresentation because he was not told he would have perpetual use of UEP land, but only assumed that he had such use. He knew that he was building on land owned by the UEP and that there were limitations on his use of the property. He knew that the property was owned by a trust and that the trust had a written declaration but failed to make any inquiry as to its contents or his status. The negligence in this situation is Mr. Pipkin's. He could not have reasonably relied on the words or J. Marion Hammon as giving him unrestricted, perpetual use of the land upon which he built.

Further, the Court is not convinced, given the vast amount of testimony heard on the topic, that J. Marion Hammon would have ever told Mr. Pipkin that he was being "given" a lot for his perpetual use. In his testimony Mr. Hammon denied ever making such a statement to any lot user. Such an arrangement would have been contrary to the entire program in which the UEP was engaged in the Short Creek communities. The clear weight of the evidence shows that he would not have been "given" a lot or specifically promised perpetual use of it by Mr. Hammon.

Constructive Fraud

The Court finds that Mr. Pipkin's claim for constructive fraud has not been proven by clear and convincing evidence. There is no persuasive testimony that he was in a confidential relationship within the meaning of the law, or that he was subjected to extraordinary influence, or that his own will was dominated by another. He received what he was promised in any event.

Estoppel

The Court finds that Mr. Pipkin has failed to prove the claim for estoppel set out in the Amended Complaint. The proof does not support the claims set out in that pleading as to this cause of action. Mr. Pipkin never understood that he was to be an owner of the assets of the trust, or that his long term security would be provided for by the trust. And regardless of his assumptions, he was never told that he would have the right to occupy UEP land perpetually. He could not have reasonably relied upon the statements of Edson Jessop or J. Marion Hammon in that regard without some minimal inquiry as to his position.

Occupying Claimant

The Court finds that Mr. Pipkin's claim on this ground has not been proven and must fail for the same reasons set out above in the discussion of the claims of Mr. Burnham, specifically that Mr. Pipkin knew he was not the owner of the property.

Unjust Enrichment

The Court finds in favor of Mr. Pipkin on this claim for the reasons set out with regard to the previously discussed plaintiffs. The Court will enter declaratory judgment providing the same relief and subject to the same limitations as provided for the plaintiffs previously discussed.

David L. Stubbs

Mr. Stubbs was named as a plaintiff on all six causes tried to date. At the close of the plaintiffs' case in chief, on motion of the defendants, the Court dismissed all claims except implied contract, constructive fraud, and unjust enrichment. The Court will now examine the remaining claims.

David Lawrence Stubbs occupies a home on UEP land and has an unoccupied trailer with an addition but with no water service, on a separate plot of UEP land, both in Arizona. He has lived in Short Creek all his life. He was never given permission to use the parcels of land. Each was turned in to the UEP by Mr. Stubbs or his parents and he just continued to use the land without express permission. He has built valuable improvements on the UEP land with the

knowledge and tacit consent of the UEP. No one ever objected to his use of the properties until he received the tenant at will letter in the mid 1980's.

He first saw the Declaration of Trust about the time of the tenant at will letter. He had heard of the UEP from childhood. He also knew from his father that the Declaration had been recorded and he could go look at it, but he never did so until the mid 1980's. No one ever explained its contents and he never made inquiry. He was named as a beneficiary of the UEP at one time in recorded documents. He never understood there was a difference between membership and being a beneficiary in the trust.

He first occupied the trailer in the early 1960's while he was building a new home. The land was for sale by his father but he knew that it was going to be put in trust with the UEP by his father. It has since been deeded to the UEP. He stopped living in the trailer from 1975 to 1989, then he moved into the trailer for a short time with his wife Cora Fischer Stubbs. This plaintiff and the former Mrs. Stubbs are defendants in one of the consolidated cases which seeks to remove them from the trailer lot. The trailer was vacant and unused at the time of trial. Mr. Stubbs knew that the trailer was on land deeded to the UEP. He knew that he could not abandon, sell or mortgage the land once it was turned in to the UEP. He has not sought, or been given, permission to use the trailer or to occupy the lot. He claims the trailer and other improvements have great value which the defendants dispute.

He first lived on the lot where his home now stands (the home lot) in the early 1960's in the old home his family occupied. That home was eventually demolished. In

November, 1962, he executed a deed turning in the 5 acres on which his home stands to the UEP. Thereafter he built a new home on that property without consulting the UEP for permission. No one objected to the construction. He occupied the new home in 1977-78 and still lives there. He testified that when he deeded the land to the UEP he was told by Fred Jessop that by deeding the land to the trust he would secure it forever for him and his family from attack by enemies of the religion and that he would be giving up nothing. However, he knew that he was conveying title to the trust and that thereafter there were limitations on his use of the property. He knew he could not sell, mortgage or abandon the property and he also knew that the trustees had the right to ask those who were "wicked" to move from UEP property. He also testified that Fred Jessop told him he would be a member of the UEP when he turned in the deed to the 5 acres but he was unable to show that he had been made a member by vote of the trustees.

Implied Contract

The Court finds that Mr. Stubbs has failed to prove the existence of an implied contract allowing him perpetual use of either the trailer lot or the home lot. In each case the land was deeded to the UEP with no reservation of any estate or interest. Mr. Stubbs has simply remained in possession, apparently without objection from the trust, but the Court is unable to determine from the conduct of the parties that there was an agreement as to how long Mr. Stubbs would be allowed the use of the land or with regard to the other claims in the Amended Complaint.

Constructive Fraud

The Court finds that Mr. Stubbs has failed to prove the elements of this claim. The evidence does not demonstrate that Mr. Stubbs constructed the improvements on the UEP land as a result of a confidential relationship with the defendants, or their agents. He gave the land to the UEP out of religious zeal and to protect the land from the enemies of his chosen beliefs. He made his own choices in the matter and no extraordinary influence was brought to bear to convince him to deed the land to the UEP or thereafter to build valuable improvements. He was never promised ownership of the assets of the trust, although he may have been promised membership therein. However, even assuming that promise, membership entitles one to no ownership interest in the assets of the trust until the trust is dissolved. This information was available to Mr. Stubbs but he chose not to investigate his position by reading the Declaration or asking questions of the trust representatives. The Court denies relief on this claim for these reasons and those discussed in the Bradshaw claims.

Unjust Enrichment

With regard to the trailer lot, the Court finds that Mr. Stubbs has failed to prove a claim for unjust enrichment. He built the improvements, if in fact they are improvements, knowing that he was building on a lot belonging to the UEP. He had no permission to use the lot. He knew that he could not abandon the use of the lot or it would revert to the UEP. The evidence is uncontradicted that the trailer has long since been abandoned. Mr. Stubbs has no further claim on the use of that property or the improvements constructed thereon.

With regard to the home lot, Mr. Stubbs deeded the property to the UEP believing that he would be allowed to remain in possessions of the lot under the UEP rules as he knew them. The UEP did nothing to inform him that he would not be allowed to use the lot during his lifetime. He has now constructed valuable improvements on the land with at least the tacit acquiescence of the trust which was aware of his use of the land and did nothing to dissuade him. The Court finds that it would be unjust under the circumstances to allow the UEP to discontinue, during Mr. Stubbs' lifetime, his use of the home lot without paying compensation for the value conferred on the trust by the improvements on the land. The Court will enter declaratory relief in favor of Mr. Stubbs on this claim as to the home lot providing the relief and subject to the conditions set out above with regard to the previously discussed plaintiffs.

Ray Dockstader Timpson

Mr. Timpson was named in the plaintiffs' Amended Complaint as a claimant on the causes of action for implied contract, constructive fraud, estoppel, and unjust enrichment/occupying claimant. At the close of plaintiffs' case in chief the Court determined that the only claim of Mr. Timpson which should be dismissed was the occupying claimant cause as his home is located in Arizona.

In May, 1995 Plaintiffs' counsel filed a motion seeking amendment of the Amended Complaint on the grounds that in ruling on the defense motion to dismiss after the plaintiffs' case in chief the Court ruled that Mr. Timpson had presented sufficient evidence to state a claim for express contract and negligent misrepresentation and that those issues had been tried by express or implied agreement of the parties as

provided by Rule 15, URCP. The motion has never been answered, argued or submitted for ruling. However, the Court is of the opinion that it must be denied. The Court's rulings on the defense's motion to dismiss has been transcribed. The Courts ruling was as follows:

> "The next plaintiff was Ray Dockstader Timpson. His property is in Arizona. He testified that he was told by President Johnson that they would give him a lot. Under those circumstances, I'm dismissing the occupying claimant portion of his claim, as--as his home is located in Arizona. I'm also going to deny the motion as it--as it relates to the other claims.
>
> "On the subject of the implied contract, he testified that he likewise came to the Colorado City/Hildale area to teach, for a low wage, and was -- understood that the lot was part of his compensation. And that supports the implied contract claim. So the only thing dismissed is the occupying claimant claim." [See transcript for December 20, 1995, page 11, lines 10 through 22.]

The plaintiffs' assertion that the Court ruled that Mr. Timpson had stated a claim for Express Contract and Negligent Misrepresentation was in err. The motion to amend is denied.

The remaining claims are implied contract, constructive fraud, estoppel and unjust enrichment. The Court will now discuss those claims.

Mr. Timpson was born into The Work, the son of Alma Timpson who acted as a. member of the priesthood council for many years and who was one of the leaders of the 2nd

Ward. Ray Timpson moved to Short Creek at age 7. He had heard of the UEP from childhood. He first saw the Declaration of Trust either in 1976 or in the 1980's, depending on whether one believes deposition testimony or trial testimony. Even though he knew of the document he made no effort to read it as he saw no reason to do so. He never heard anyoné discuss the contents. No one ever told him he had been made a member of the UEP. He assumed he was a member when he got his lot. He was named as a beneficiary in documents recorded in Arizona at one time. He was never promised any ownership of the assets of the trust although he was told by his father at one time that everyone owned everything.

Mr. Timpson was sent to college as his mission for The Work. He studied history so he could go back and teach at the Academy. When he finished his schooling in the spring, 1975, he spoke to Pres. Johnson about a lot. Pres. Johnson told him "they would give me one". He was referred to Edson Jessop who staked out the lot and encouraged him to build small and then add on. He followed that advice and has now built valuable improvements on the land in three phases. The last of those phases, an addition of about 5000 square feet, was added after Mr. Timpson had been put on notice that the UEP considered him a tenant at will. He never intended to make a contribution to the UEP in building the improvements. He testified that he thought he had been "given" the lot. However, he knew that he could not sell, mortgage or cease to occupy the lot or the UEP would take it back with its improvements. He did not know and was never told that he could be removed by the trustees at their pleasure before building the first two phases.

Even though Mr. Timpson testified that he thought he was the owner of the lot, he went to representatives of the UEP to get permission for each phase of the expansion of his home. He knew that he needed permission to add on. He derives his definition of ownership from a religious concept of stewardship which he believes in, not on the law of the land. He knew throughout the period in question that title to land was transferred by deed and that the title to the land he occupied belonged to the UEP.

Implied Contract

The Court finds that Mr. Timpson has failed to prove his claim. He rests his claim on the word "given" which he ascribes to President Johnson. Even if the Court were persuaded that the word was actually used, that does not automatically give rise to the inference that Mr. Timpson was entitled to use the lot perpetually, much less that he was the owner thereof. In view of all Mr. Timpson knew about how title to land is transferred and about the restrictions in force on his use of UEP land, it was not reasonable for him to rely on the use of one word, given, as a basis for assuming that he had the right to use the lot forever, no matter whether he complied with those restrictions or not. He was obligated to make inquiry to clarify his status. The Court finds no evidence that there was a meeting of the minds in this situation. The Court is persuaded by the testimony and evidence that Mr. Timpson, an educated person and son of one of the leaders in The Work and UEP, knew very well that he was on the land with the permission of the true owners and under limitations. That is born out by the fact that Mr. Timpson sought UEP permission before adding on to his home. In addition Mr. Timpson certainly has no claim for

implied contract for the addition he built even after being specifically notified that he was a tenant at will on UEP land.

Constructive Fraud

The Court finds that this claim has not been proven as to this plaintiff. The evidence before this Court is insufficient to support the proposition that Mr. Timpson was in a confidential relationship with the trust or its agents and that he came under extraordinary influence such that his will was overcome in this transaction. For the reasons stated with regard to the previously discussed plaintiffs the Court finds against the plaintiff on this claim.

Estoppel

The Court finds that Mr. Timpson's claim for estoppel has not been proven. Mr. Timpson never testified that he had been promised ownership interest in the assets of the trust of any different character than anyone else in the community. He had available to him the means to determine his true relationship with the trust which he chose to ignore. Likewise he was never promised long-term security from the trust and he did not so indicate in his testimony. He could not reasonably rely on the one word gift of a UEP lot in view of all he knew and accepted about the restrictions on his occupancy of the lot. He did not rely reasonably upon the language of Pres. Johnson in constructing improvements on the lot. He has no claim of estoppel for the last addition built after specific notice that he was considered by the trust to be a tenant at will and not a perpetual occupant.

Unjust Enrichment

The Court finds for Mr. Timpson on his claim of unjust enrichment for the reasons stated with regard to previous plaintiffs. In addition, Mr. Timpson was allowed by the trust to construct valuable improvements on UEP land, even after he had been notified that the UEP considered him a tenant at will. It would be unjust for the UEP to take those improvements without compensation therefore. The Court will enter declaratory judgment providing the relief, and subject to the same restrictions, as stated in discussion of the previous plaintiffs.

Fayila Maureen Williams

Ms. Williams was named a plaintiff in the Amended Complaint for the claims of implied contract, constructive fraud, estoppel and unjust enrichment/occupying claimant. At the close of plaintiffs' case in chief the Court dismissed, on defense motion, the claims of Ms. Williams except for occupying claimant. The Court will now address that remaining claim.

Ms. Williams sought to assert the position of her dead husband in these proceedings. She is currently in possession of the home they occupied together but could prove no permission from the UEP for her to use it. She was not present when her husband was given permission to use the land and no persuasive and admissible evidence was presented of what transpired when her husband took possession of the land. She has not constructed any improvements directly although she assisted her husband in doing so by working and giving her pay to him. She always

knew that the home she occupied was on land owned by the UEP.

Occupying Claimant

The Court finds that Ms. Williams has failed to prove her claim under the Utah statute. As stated in the discussion of Mr. Burnham's claim, one cannot state a claim under that statute without proving a good faith belief of ownership of the land in question. Ms. Williams, and presumably her husband, always knew that they were building on the land of another.

John M. Williams

Mr. Williams was named a plaintiff on all claims tried to date. At the close of plaintiffs' case in chief the Court dismissed only his claim for implied contract. The Court will now address the remaining claims.

Mr. Williams occupies a lot in Utah. He became associated with The Work in 1952 as a child. He knew of the UEP and the written Declaration most of his life although he first saw it in 1980. He did make efforts to see the Declaration but testified that he was discouraged by J. Marion Hammon and Edson Jessop. He believes he became a member of the UEP when he was allowed to use a UEP lot. He claims Edson Jessop told him he was a member once. He produced no evidence that he had been made a member by vote of the trustees. He was named a beneficiary of the trust in documents recorded in Arizona.

At or near the end of 1969 he went to Pres. Johnson and was told that it was time for him to build a home. Pres.

Johnson referred him to Edson Jessop who helped him select a lot. He has since built valuable improvements on the land. Mr. Williams testified that at some point Edson Jessop told him the lot was his. He always knew he was building on land owned by the UEP. He knew that if he left the improvements, they and the land would revert to the UEP. He never made inquiry as to his rights or status on the land and was never promised perpetual use or ownership. He never considered himself a tenant at will but made only feeble inquiry to discover the truth of his situation. He was never told that he could be asked to leave the land at the pleasure of the trustees or that he could be forced to leave. He was never told that Edson Jessop had any authority to enter into agreements on behalf of the UEP. He was never told that the UEP would provide him with long-term financial security.

Express Contract

The Court finds that Mr. Williams has failed to prove his claim of express contract. He was never promised that he would have perpetual use of the UEP land and in fact he understood that his use was restricted and conditional. He has also failed to prove the other contract claims asserted in the Amended Complaint.

Negligent Misrepresentation

The Court finds that Mr. Williams has failed to prove this claim. He denied that he was told that his long-term security would be seen to by the UEP. No one with authority to speak for the UEP promised him ownership of the trust assets. He testified he was told that he could only be removed from the lot if he left. He was never told the UEP would protect his lot from attacks from without the com-

munity. The Amended Complaint then alleges that Mr. Williams was mislead by the failure of the trust to inform him of certain information. Mr. Williams knew there was a Declaration of Trust which he could review to determine his status and rights. He never approached the trustees about reviewing the document, nor did he undertake any meaningful inquiry about his status on the land. At best he made inquiry about reading the document and was discouraged by Mr. Hammon and Mr. Jessop. The Court is persuaded by the evidence that Mr. Williams was motivated to build on UEP land by his religious convictions and his desire to live among those who believed as he believed. He was not mislead into thinking that he was an owner of the trust, or that he had perpetual right to use the land by the failure of the UEP to fully inform him of the facts. He is as responsible for his lack of knowledge on the subject as is the UEP.

Constructive Fraud

The Court finds that Mr. Williams has failed to prove this claim. The evidence does not support the proposition that he was in a confidential relationship, within the meaning of the law, or that he was subjected to extraordinary influence which caused him to build on UEP land. He wanted to do so. He sought and obtained permission. He exercised his own free choice and cannot blame another for the consequences of his failure to inform himself of the circumstances.

Estoppel

The Court finds that Mr. Williams has failed to prove his claim for estoppel. He was not promised co-ownership of the assets of the trust, or perpetual use of a lot, or long-term

security as stated in the Amended Complaint. Therefore he could not have reasonably relied upon such information.

Occupying Claimant

For the reasons stated in discussing the claims of Mr. Burnham, Mr. Williams has failed to prove his right to the protection of the occupying claimant statute of Utah.

Unjust Enrichment

The Court finds that Mr. Williams has proved his claim for unjust enrichment in that he has conferred a benefit upon the UEP by constructing valuable improvements on the land of the trust with the express encouragement and consent of the trust. The Court finds that it would be unjust to allow the trust to take the improvements under the circumstances presented without compensation for the value conferred upon the trust. The Court will enter declaratory judgment providing the same relief, and subject to the same restrictions, as stated with regard to the previous plaintiffs and for the same reasons.

Roger Eugene Williams

Mr. Williams was listed in the Amended Complaint as a plaintiff on all six claims tried to date. At the close of plaintiffs' case in chief the Court dismissed all Mr. Williams claims except constructive fraud and unjust enrichment. The Court will now discuss the remaining claims.

Mr. Williams occupies UEP land in Arizona. He became affiliated with The Work in 1952 as a child. He knew of the UEP from childhood. He never had dealings with anyone

from the UEP. He has never seen the Declaration of Trust. He was never told how to become a member of the UEP although he always thought he was a member. No one told him he was a member but he assumed he was after being allowed to use a UEP lot.

He asked Edson Jessop for a UEP lot in 1970 and was assigned one to build on. He never spoke with a member of the priesthood council or the trustees to get permission. Edson assigned the lot and he built on it. His house plans were reviewed by Pres. Johnson before he built. He was never told he would be a tenant at will but made no inquiry as to his status. He knew that he couldn't sell, mortgage or abandon the use or his property would go back to the UEP. He also knew the trustees would ask people to leave UEP land if they had committed some act of moral turpitude. He was never given a deed to the land he occupies.

Constructive Fraud

The Court finds that Mr. Williams has failed to prove his claim for constructive fraud as there is absolutely no evidence of a confidential relationship or extraordinary influence as discussed previously with regard to other plaintiffs.

Uniust Enrichment

The Court finds that Mr. Williams has proved his claim for unjust enrichment for the reasons stated previously with regard to the other plaintiffs. The Court will enter declaratory judgment providing the same relief, and subject to the same restrictions, as that stated in regard to other plaintiffs previously.

Thomas J. Williams

Mr. Williams was named as a plaintiff in all six of the claims tried to date. The Court dismissed only the implied contract claim at the conclusion of the plaintiffs' case in chief. The Court will now discuss the remaining claims.

Mr. Williams occupies UEP land in Utah. He has been associated with The Work since earliest childhood. He moved to Short Creek in 1952 at 4 years of age. He first heard of the UEP as a youth. He thought it owned several enterprises in the community and that most people were "tied up" with the UEP.

His dealings were mostly with J. Marion Hammon, whom he feared and trusted greatly. He knew there was a written document for the UEP during his high school years but did not know it was recorded. He never saw, or sought, the document until 1982. He never heard anyone discuss the contents of the document in meetings. He was told that he could become a member of the UEP by consecrating labor or service.

In July, 1970, he approached J. Marion Hammon to get a lot. Mr. Hammon told him that he had served the priesthood well and was welcome to get a lot and build on it. He thought that made him a member of the UEP, although he produced no evidence that the trust had made him a member. He was listed among the UEP's beneficiaries in recorded documents.

He built a home and completed it in 1973. At some time thereafter he had a talk with Edson Jessop in which he asked

what the trust was for. Edson said the homes on UEP land belonged to them and their families and they should build nice homes. There were no other discussions regarding Mr. Williams rights or status on UEP land. He knew, however, that the trust owned the land and that he could not sell, mortgage or abandon the land or it would go back to the UEP. He was not told that he was a tenant at common or that he could be forced off the land. No one ever told him how long he would be allowed to use the lot.

Express Contract

The Court finds that Mr. Williams has failed to prove his claim of express contract. He has failed to prove that he was offered perpetual occupancy of the land. He has not proven that he was promised co-ownership of the trust assets or that he was promised security from the UEP. Any comments from Edson Jessop about the purpose of the trust came after the improvements had been built and were not the basis on any agreement or any action by Mr. Williams.

Negligent Misrepresentation

The Court finds that Mr. Williams has failed to prove this claim as there is no evidence that he received the representations set out in the Amended Complaint or that he did not receive, or was mislead by the failure to communicate the information set out in the Amended Complaint. In addition it is apparent that Mr. Williams took no steps to ascertain the truth of his position on the UEP land before installing improvements. He had the means to inform himself but chose not to pursue those means.

Constructive Fraud

The Court finds that Mr. Williams has failed to prove this claim for the same reasons as the previous plaintiffs. He did not even claim that he built on UEP ground because of this confidential relationship with the defendants or their agents. He sought out the permission to build on the land and it was granted. He cannot now place blame on his benefactor because of his own self induced lack of information.

Estoppel

The Court finds that Mr. Williams has failed to prove this claim as he has pointed to no action, statement or admission of the defendants upon which he reasonably relied in building the improvements on UEP land. He knew that he was building on the land of another and made no reasonable inquiry as to his rights and status prior to building.

Occupying Claimant

The Court finds that Mr. Williams has failed to prove this claim because he lacked the good faith required under Utah law, as discussed with regard to Mr. Burnham's claim.

Unjust Enrichment

The Court finds that Mr. Williams has proven this claim. For the reasons stated with regard to previous plaintiffs, the Court will enter declaratory judgment providing the relief, and subject to the same limitations, as has been provided for previous plaintiffs under this claim.

Don D. Timpson

Mr. Timpson was named in the Amended Complaint as a plaintiff on all six causes of action tried to date. The Court dismissed, at the conclusion of the plaintiffs' case in chief, all claims except constructive fraud and unjust enrichment. The Court will address those claims now.

Mr. Timpson was born into The Work, the son of Alma Timpson previously mentioned. He knew of the UEP as a child and knew of its Declaration although he never thought it important until 1987. He asked Rulon T. Jeffs if he could read the document and was provided a copy and allowed to read it.

He approached Pres. Johnson in June, 1977, and asked about moving to Short Creek and getting a UEP lot. Pres. Johnson told him to contact Edson Jessop, who assigned him a lot. He was told to start small, build a fence and that his name would appear on the next list of beneficiaries, which it did. He has since built valuable improvements on UEP property with the agreement and consent of the UEP.

Constructive Fraud

The Court finds that Mr. Timpson has failed to prove his claim for constructive fraud. The evidence is unpersuasive that he was involved in a confidential relationship, within the meaning of the law or that he was subjected to extraordinary influence, or that his will was overcome in any way. He sought permission to build on UEP property and got it. He did so without the slightest attempt to inform himself as to his rights or status on the land. He cannot blame the UEP for his own lack of diligence.

Unjust Enrichment

The Court finds that Mr. Timpson has proven his claim for unjust enrichment. He has conferred a benefit by building valuable improvements on UEP land, with express consent and encouragement of the UEP, under circumstances which the Court finds would make it unjust for the owner of the land to take the improvements, during Mr. Timpson's lifetime, without paying for the value gained by the trust. The Court will enter declaratory judgment providing the same relief and subject to the same limitations as provided for previous plaintiffs under this claim.

John W. Timpson

Mr. Timpson was named in the Amended Complaint as a plaintiff in all six claims tried to date. The Court dismissed all claims except implied contract, constructive fraud and unjust enrichment. The Court will now address those remaining claims.

Mr. Timpson has been associated with the work since birth and is the son of Alma Timpson. He went to the Univ. of Utah and the taught at the Colorado City Academy. He moved to Short Creek in 1960. He was living with his father. J. Marion Hammon assigned him a lot and told him to build on it and to develop a water well. He built the improvements on the lot and moved in 1969. He knew that he did not own the lot. He knew that he could not sell, mortgage or abandon it without losing it to the UEP. He knew people could be asked to leave town for not adhering to priesthood council standards.

Mr. Timpson testified that he came to the area and taught at the Academy at very low wages. Although no one told him so, he assumed that the use of a lot was part of his compensation for teaching and that he was allowed to use it because he was a member of The Work in good standing. He was never told that he was a member of the UEP although he was listed as a beneficiary. He made lots of contributions of labor and money to The Work and the UEP but he could produce no evidence that he was ever made a member or that anyone with the authority to speak for the trust ever promised him co-ownership of trust assets.

Implied Contract

The Court finds that Mr. Timpson has failed to prove his claim of implied contract. Nothing in the conduct of the parties allows the Court to conclude that there was an agreement that Mr. Timpson would be allowed perpetual use of the lot he built on. Mr. Timpson may have assumed that he had that right but no such intent was evident from the conduct of the UEP. He was treated just like the other 200 or so persons who were allowed to live on UEP property.

Constructive Fraud

The Court finds that Mr. Timpson has failed to prove this claim. There was no persuasive evidence of a confidential relationship or the use of extraordinary influence in Mr. Timpson's decision to build on UEP property. Mr. Timpson exercised his own ability to choose and was not mislead by representations or lack of information from the defendants. His decisions were motivated by religious beliefs, not the influence of defendants. If he chose unwisely it is because he

failed to take of advantage of his known opportunities to inform himself.

Unjust Enrichment

The Court finds that Mr. Timpson has proven his claim for unjust enrichment for the same reasons stated in analyzing the claims of other plaintiffs. The Court will enter a declaratory judgment providing Mr. Timpson with the same relief, and subject to the same limitations as previously afforded the other plaintiffs under this claim.

RELIGIOUS ISSUES

In their memoranda the parties argue that the Court must apply neutral legal principles in deciding the issues in this case. Each has a different understanding of the meaning of that phrase and its application in this case.

The U.S. Supreme Court has provided the following direction which the Court finds helpful in this case. In *Maryland & Virginia Eldership of Churches of God v. Church of God, Inc.*, 396 US 367; 90 S. Ct. 499 (1970) the Court said,

> "There is no violation of the establishment clause of the First Amendment in the use of civil courts by religious organizations to decide disputes, particularly property disputes, but civil courts may not become involved in determining ecclesiastical or doctrinal questions."

Thereafter, in *Reardon v. Lmoyne*, 122 N.H. 1042; 454 A.2d 428 (1982) it was held,

"Civil courts are permitted to consider validity of non-doctrinal contracts for claims which are raised by parties to contracts with religious entities, and this requires courts to evaluate pertinent contractual provisions and extrinsic evidence in cases of ambiguity, to determine whether any violations of contract have occurred, and to order appropriate remedies, if necessary."

Then in *Bishop & Diocese of Colorado v. Mote*, 716 P.2d 85; *cert. denied,* 107 S. Ct. 102 (1986) the holding was:

"In determining property rights of local church which succeeds from the national church, civil courts may examine religious documents that intertwine religious concepts with matters otherwise relevant to the issue of who controls property with the restriction that courts must defer to a church's authoritative resolution of any doctrinal issue necessarily involved in interpreting or applying provisions of such documents."

The Court has attempted to apply these principles in the trial of the issues presented in this case. The Court has ruled on the legal claims of the parties taking into consideration the religious setting in which the dispute arose but has decided the case using neutral principles of law which have no relationship to the religious disputes in the case, which are not before the Court and which this Court could not decide under the provisions of both the United States and Utah Constitutions. The Court has ruled throughout these proceedings that the issues it will address have nothing to do with which ward is the "true" successor to The Work, or like questions. Those are religious issues and are beyond the jurisdiction of this Court.

CONCLUSION

The plaintiffs' counsel is to prepare and submit for signature a declaratory judgment in accordance with the rulings contained herein and pursuant to the applicable Rules of Civil Procedure and provisions of the Code of Judicial Administration. The judgment is to contain the Court's rulings adverse to the plaintiffs as well as those favorable.

DATED this 11th day of January 1996.

J. PHILIP EVES, District Court Judge

APPENDIX B

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT IN AND FOR WASHINGTON COUNTY, STATE OF UTAH

UNITED EFFORT PLAN, *et al.*, Plaintiffs,
vs.
STUBBS, *et al.*, Defendants.

MEMORANDUM OPINION

CASE NO. 890502850 CV

This case came before the court for oral argument on August 12, 1996, on four pending post-trial motions. The plaintiffs were represented by Mr. Reid Lambert and the defendants by Mr. Raymond Scott Berry, Mr. Reed L. Martineau and Mr. Rodney R. Parker. Two motions were summarily granted, by agreement, from the bench and Mr. Berry was ordered to prepare and submit appropriate forms of orders setting out the decisions. The other two motions, the defendants' Motion to Dismiss the 6th Claim for Relief (hereinafter referred to as the Motion to Dismiss) and the defendants' Motion to Alter or Amend Memorandum Decision and Final Judgment to Address Omitted Issues Pursuant to Rule 60 *U. R. C. P.* (hereinafter referred to as the Motion to Alter), were taken under submission. The court, being fully advised in the matter, now writes to decide these two motions.

MOTION TO DISMISS

During the trial and in related pleadings and motions in this matter, the defendants raised and argued issues as to the applicability to this case of the Religious Freedom Restoration Act of 1993.[1] The court held in its Memorandum Opinion that the act was not applicable to the issues in this case, but probably did not accord to the issue as full a discussion as the defendants wished. By this Motion the defendants apparently seek clarification and amplification of the court's views on the applicability of this provision of Federal law. They argue again that the court should dismiss the unjust enrichment claims of the plaintiffs and allege that the relief sought, and now the relief awarded by the court, constitutes an impermissible "substantial burden" on the defendants' free exercise of their religion and is without a compelling state interest and is not the least restrictive means available for furthering any existing governmental interest. The defendants' Motion is, of course, opposed by the plaintiffs.

The court is of the view that its decision in this case does not substantially burden any person's free exercise of religion, that even if there is some burden it is incidental and is justified by a compelling state interest and that the approach taken by the court is the least restrictive means available to further that interest.

Both parties cite the same case for the definition of what constitutes a "substantial burden" within the meaning of the Act. In *Sasnett v. Sullivan*, 908 F. Supp. 1429 (Wis. 1995) it was determined that to be a substantial burden, the government action must: significantly inhibit or constrain

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[1] See 42 USC 2000bb *et. seq.* attached as exhibit 1.

conduct or expression that manifests some central tenet of a (person's) individual (religious) beliefs; must meaningfully curtail a (person's) ability to express adherence to his or her faith; or must deny a (person) reasonable opportunities to engage in those activities that are fundamental to a (person's) religion.

Defendants take the position that the court's decision granting equitable relief on the grounds of a claim of unjust enrichment is violative of this definition. The defendants struggle in specifying, however, and the court fails to see, just how the court has burdened the free exercise of religion within the above stated definition of those terms. Nothing that the court has done in fashioning an equitable remedy to resolve the dispute between the United Effort Plan Trust and those who occupy its lands infringes in any way upon the religious practices, beliefs, activities or expressions of adherence of members of any religious group.

The defendants seem to argue that their right to practice a religious principle called the United Order is impaired by the fact that those who are not members of their faith are occupying land which belongs to a trust administered by leaders of their church. The defendants have presented no evidence in these proceedings to demonstrate that assertion. The evidence does indicate that the United Order is a goal of the defendants' church but that it is not being lived presently nor was it being lived when the plaintiffs were allowed by the trust to occupy UEP land and build improvements thereon. The evidence also was that the trustees have and do allow non-members to continue to reside on UEP land independent of the court's decision. No evidence was presented as to what constitutes the United Order and how the practice of that principle would be impacted adversely by the presence of nonbelievers in the community. The fact that the

adherents of a religion may wish to live among others who believe similarly does not mean that they have the right to remove non-believers from their midst nor does the evidence in this case indicate that the defendants' church so teaches. In fact, the evidence is that the defendants' church has taught that those who move onto UEP land and then become estranged to The Work will become discouraged and leave by themselves, without the need of removal by the faithful. Therefore the court fails to see that a part of the United Order principle has been burdened by the remedy fashioned by the court.

The defendants also assert that their religious practice is somehow infringed by the fact that non-members of the Fundamentalist Church of Jesus Christ of Latter-Day Saints are living on UEP land by order of the court rather than under the direction of the trust. It is important to note that the court did not place the non-believers in possession of the United Effort Plan's land. The trust, or its representatives, decided who could live on the land and under what circumstances. Unfortunately, the trust did not make clear to the occupants of the property that their right to stay on the property was limited by various factors, including faithfulness to the same religious beliefs as the UEP's trustees espouse. The occupants have now constructed improvements on the property at considerable expense which would be forfeit if the occupants were required to simply vacate the UEP's land.

The issues presented to the court, and which both sides asked the court to decide, raised questions as to the relative rights of the UEP and those occupying UEP property in view of the situation they had jointly created. The court sought in its decision to define and clarify the rights of all parties under concepts of equity and to allow the UEP and the occupants of

its land to continue to co-exist without further contention or hostility. In doing so the court sought to apply non-religious, neutral principles of law. The court specifically avoided making decisions about the religious practices of the parties or their religious differences.

This court fails to see how the application of neutral legal and equitable principles to resolve an important civil dispute involving significant property rights and issues has created any burden, let alone a substantial burden, on any person's free exercise of religion. The adherents to the UEP's views are still free to practice their religion in full. The court's decision simply means that if the trustees of the UEP wish to remove those living on UEP land, for what ever reason, they will have to compensate them for the value of the improvements acquired by the UEP in the process. That may mean that the UEP will incur additional expense to remove these occupants but that does not create a substantial burden on anyone's free exercise of religion. (See *Messiah Baptist Church v. City of Jefferson, Colorado*, 859 F.2nd 820.) Of course, if the UEP does not desire to pay for the improvements installed on its land by those the UEP allowed to occupy UEP land, then the UEP need only wait until the occupant abandons the improvements or dies and the land and the improvements revert to the UEP without compensation to the occupant or the estate or the survivors of that occupant.

It appears that the UEP is really arguing that anything the court does that interferes with its desire to conduct its affairs as it sees fit is a violation of the Act. The court sees the purpose of the act differently. The act does not prohibit government regulation of religious organizations. In fact, it contemplates that there will be general laws which apply to the activities of such organizations. The act simply prohibits

regulation that interferes in a substantial way with the ability of a person to practice his or her religious beliefs, unless a compelling interest of the state is demonstrated and the state is properly restricted in the application of its laws to that person.

The court has held herein that there is no burden on free exercise of religion in this case but assuming for argument's sake that there is a substantial burden, the court is also of the opinion that any such burden is clearly justified by a compelling state interest in resolving issues relating to real property rights. Our constitutions, state and federal, secure to all citizens certain rights which are considered basic. Among those are the right to due process of law before being deprived of property and equal protection of the law. The plaintiffs in this case are entitled to those protections in this case where the opposing party is a legal entity set up to further religious goals just as they would be if the opposing party were any non-religious entity. The issues decided here involve basic property rights and are typical of disputes routinely heard and decided by courts across the country. The state has the obvious and compelling interest of providing a forum and a mechanism for the resolution of disputes about such matters, regardless of the involvement of a religious organization. The property laws of the state must apply to religious organizations as well as to non-religious litigants. If the law were to be applied otherwise churches could not acquire title to property, or convey title to others, or protect their lands and rights. Clearly the state has an interest in assuring that all of its citizens. religious and otherwise. enjoy protection for the basic rights afforded by citizenship in this country and any the states.

Although Mr. Berry has decried the use of examples to clarify this argument, the court finds them instructive on

occasion. For example, suppose the religious organization in question believed in the practice of ritualistic human sacrifice and sought to subject members or non-members to murder during such worship services. There can be little doubt that the state would be able to interfere with such practices and declare them illegal and to punish those participating in such activities. The right to life, established in our Constitutions as a paramount right of citizenship must take priority over the right to practice religion.

Likewise the rights afforded in a society of law, such as due process, equal protection of the law, the right to own property and the ability access a forum to resolve property disputes under universally applicable and neutral law must be recognized as having priority over an individual's right to free exercise of his or her religion. The state has a compelling interest in enforcing the rule of law in our society.

In deciding this matter the court has adopted the very least restrictive approach in developing an equitable remedy. The decision recognizes the rights of the occupants in the permanent improvements which they have installed on UEP land but gives the UEP ownership and ultimate control over the use of the land it owns. If the UEP wants to divest an occupant of the possession given by the UEP, it can be done but the UEP is required to pay for the benefit it receives in the process. No one has been able to suggest a less restrictive approach to the problem. The only approach less restrictive would be for the court to simply turn its back on the situation, refuse to determine the rights of the parties and let the parties battle it out among themselves. Ultimately, for one side or the other, and maybe for both, that approach would ultimately prove more costly than the one adopted by the court.

For the reasons stated here, the court denies the Motion to Dismiss brought by the defendants. Mr. Lambert is to prepare the appropriate order.

MOTION TO ALTER

Following the trial and the memorandum decision in this case, the defendants filed their Motion to Alter in which they seemed to intimate that the court omitted certain issues before it when the case was decided. The issues identified, *ie*: the payment of taxes, past and future, and the future construction of improvements on UEP lands were not tried[2] and were not part of the issues submitted to the court. The court did not omit discussion on these points. These questions arise now as after thoughts because of the equitable remedy fashioned by the court. Nonetheless, the court will address these issues in this opinion because they will have to be resolved at some time if the parties are to know their positions on these issues and co-exist under the court's declaration of equitable relief.

These issues have now been briefed and the parties have argued the matters in the presentation of this motion. The court is of the opinion that further presentation of evidence would not clarify the issues. The questions presented are principally legal questions which the court should answer as a part of its comprehensive decision in this matter.

By way of prefacing the discussion of the issues, a bit of history may be helpful. As each of the plaintiffs took

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[2] The court did hear evidence on the history of tax assessment and collection among those occupying UEP lands. However, there was no claim in the pleadings for recoupment of those taxes and that issue did not surface during the trial.

possession of the UEP property for the first time, each did so knowing that they were building on land which belonged to the UEP. Each knew there were specific limitations on the right to use the land. Each knew that the permission of the owner was needed, both to move onto the land and to construct improvements thereon. All sought and obtained that permission.

Each plaintiff also knew that the primary obligation to pay the property taxes on the UEP land lay with the persons occupying the land and the general membership of The Work would be called upon to contribute tax money to the UEP only if those occupying the land could not pay the taxes. Even after the division between the parties arose, some of the plaintiffs tried to discharge that obligation by offering to pay the taxes through the UEP. Their offers were refused by the UEP on advice of their legal counsel, but there can be no doubt that the plaintiffs understood the taxes to be their responsibility. They had been faithfully billed over the years and clearly understood their position in that regard.

There is no reason, in law or equity, in the view of this court, why the plaintiffs should now be relieved of the responsibility for taxes on the property they occupy and the improvements constructed thereon or appurtenant thereto. The court orders that the plaintiffs pay those taxes. The payments are to be made through the UEP under the provisions and on the terms following.

In deciding the procedure for the assessment, notice, collection and handling of the tax payments, as well as the procedures dealing with non-payment, the court has tried to allow the plaintiffs adequate time to prepare for the payment of taxes and to redeem themselves from the failure to pay, should such a situation arise. However, the court is of the

opinion that the owner of the property should not be burdened with the payment of taxes for occupants of the land, especially where the occupants remain by order of the court and against the wishes of the UEP. It is also quite obvious that the occupants who are plaintiffs in these consolidated cases can no longer expect the UEP to look to the membership of the Fundamentalist Church of Jesus Christ of Latter-Day Saints to contribute to the payment of taxes, since these plaintiffs no longer belong to that same religious organization. Therefore, the procedures following will be more accelerated and perhaps more harsh that those accorded persons paying taxes on their own land under the laws of Utah or Arizona.[3]

The procedure will be as follows. For each tax year the UEP will make arrangements to obtain from the county governments assessing taxes against UEP land, as soon as possible after the final assessment notices are issued, an individual listing of the taxes assessed to each occupying plaintiff's holdings. Within 10 days after those individual listings are available, the UEP will notify each person occupying land under this court's judgment, of the amount of taxes assessed against the UEP for which the occupant is responsible and the due date for payment. The date for payment shall be the same date for payment imposed upon the UEP by the taxing authority.[4]

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[3] The court has conferred with officials of county government in both Utah and Arizona to determine their procedures under state law for the taxation of land.

[4] In Utah, the Notice of Property Valuation and Tax Change is issued in July, advising the taxpayer of the likely amount of taxes to be paid by November 30 of that same year. The actual Tax Notice, finally setting the amount to be paid, goes out in October. The UEP would be obligated to give notice to the occupants in Utah of taxes owed with the October Tax

The occupants of UEP land shall pay to the UEP, in lawful currency of the USA, their proportionate share of the UEP tax assessments on or before the date the taxes are due from the UEP to the taxing entity. Any taxes not paid by the due date will be delinquent and will be subject to interest at the highest rate allowed by law from the due date forward. The UEP shall maintain records of payments received and issue receipts for payment. The UEP will also issue notice to the occupants annually, within 30 days after the tax due date, of those taxes not paid and delinquent.

In the event that any occupant of UEP land under this court's judgment fails to pay the proportionate share of taxes assessed to his holdings, then the UEP may pay those taxes to the taxing entity to preserve its interest in the land. The UEP will allow a grace period of 3 months after the taxes become delinquent before commencing collection efforts except that interest shall be added to the amount due during that 3 month period. If the taxes have not been paid current during the 3 month grace period, the UEP may then file suit against the occupant in any court of competent jurisdiction and obtain a judgment against the occupant for the delinquent taxes plus interest at the highest rate allowable by law and costs of court. The judgment may be collected in the same way as any judgment under the law, excluding foreclosing the occupant's interest in UEP lands under this court's judgment. The occupant may, of course, avoid the loss of his or her interest in the use of the UEP land by paying the

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Notice each year.

In Arizona, the tax notices for year 3 go out in November of year 1. The taxes are payable in March (1/2) and October (the remaining balance) of year 3. The UEP would be obligated to give notice of the taxes payable as soon as the amount of the taxes was finally communicated to them by Mojave County.

delinquent taxes, plus accumulated interest, at any time prior the filing of a suit to remove the occupant from UEP land, as set out hereafter.

However, in the event that the occupant fails to satisfy any judgment obtained under these provisions for 3 years after its entry, or fails to pay delinquent taxes for 4 years after the initial due date, which ever comes first, the UEP may seek through the courts to remove the non-paying occupant from UEP land based on the delinquent taxes. The failure to pay taxes within the time frames provided herein shall constitute an adequate basis in equity to allow the UEP to remove an occupant and to require the occupant so removed to forfeit any interest in the UEP land or the improvements thereon.

The remaining issue raised in the Motion to Alter is the question of future improvements. The plaintiffs herein seek to be allowed to install improvements on UEP land and to bring those future improvements under the provisions of the court's decision in this matter. The UEP opposes the installation of further improvements on its lands without its permission. The UEP also reasons that the installation of future improvements would increase the financial burden on the UEP if, in any individual case, the UEP decided to exercise its option to remove an occupant by paying for the value of the improvements.

The court has found, as factual determinations, that the plaintiffs herein knew that they were building upon the land of the UEP and that permission to do so was required. These plaintiffs also knew that the nature and extent of the improvements were subject to that same permission from the owner of the land. The UEP apparently exercised closer supervision over some plaintiffs than others as improvements were installed but it was always understood by these plaintiffs that

they were building with the express or implied permission of the owner of the land. That permission has now been revoked by the UEP in the cases of these plaintiffs.

The plaintiffs argue in their response to this Motion that the usefulness of their occupancy of the land would be seriously impaired if they could not build future improvements as their families grow or other needs present themselves. Nothing that the court has done in deciding this case should be construed as conferring upon the plaintiffs the right to use the UEP's land in that fashion. The case decided by the court dealt with existing improvements, not future improvements. The court was never presented with, nor did it consider, a claim that the occupants of UEP land had the continuing right to construct improvements on UEP land, even over the UEP's objection.

The court is aware, however, that neither side in this case would benefit from the deterioration of the existing improvements due to the effects of time, weather, waste, accidents, or normal wear and tear. The occupants of the existing improvements need have some latitude to maintain the improvements so that the use of those existing improvements is not impaired. On the other hand the UEP will not want to be left with dilapidated and useless structures on the land when the ownership of those improvements passes to the UEP. A simple refusal to allow any future improvements would certainly not be in the best interests of either party.

The law in this area is straight forward. The right to regulate the installation of improvements on any land belongs to the owner of the land. Under the provisions of the Uniform Building Code and the local and state legislative enactments applicable, the occupants of this land would not be able to obtain building permits for improvements unless

the UEP sought the permit as the owner of the land. No permit should be issued to anyone to build on someone else's land without the owner's permission.

The court now orders that the plaintiffs herein shall not construct improvements on UEP land if under applicable law[5] the project requires a building permit, without the express written permission of the UEP. Any project which an occupant of UEP land wishes to undertake shall be submitted to the UEP for approval before it is submitted to any governmental authority or agency. The court trusts that the UEP will give fair and full consideration to these requests as they are received and will allow those that impose no important additional burden to the UEP and its future plans for the use of its land.

The court also orders that occupants of the UEP land may perform maintenance and construct improvements not requiring a building permit under applicable law, but must notify the UEP of the intent to do so at least 7 days before any work on the project occurs so that the UEP can inspect and catalogue the existing improvements and the new improvement or maintenance project.

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[5] The applicable law will vary to some degree based on the State where the land is located, and the local law which applies to that particular parcel of land. The court is informed that the Uniform Building Code has been adopted by the Counties of Mojave and Washington, as well as the Cities of Hildale and Colorado City, but perhaps with some different modifications. These governmental entities have also passed ordinances of various types which may impact on the need for a building permit in any instance. The determination of the applicable law must be made then on a case by case basis by the parties. The UEP should bear the ultimate responsibility to assure that those laws are applied properly upon UEP land.

The court also orders that the UEP shall not be responsible, in the calculation of any value it obtains by application of this court's decision in these consolidated cases, to pay for the value of any improvement installed on UEP land by any of these plaintiffs after the filing date of the plaintiffs' lawsuit against the UEP or the date when the plaintiff in question can be shown to have received actual notice that no further improvements should be constructed on UEP land, which ever date is earliest.

In the event that any plaintiff constructs unapproved improvements on UEP land without complying with the procedures set out above, the UEP is hereby authorized to seek to evict that plaintiff by judicial proceedings and, if successful, can be awarded costs and attorney fees as consequential damages for the failure to comply with this court's order.

DATED this 5th day of September, 1996.

J. PHILIP EVES,
District Court Judge

APPENDIX C

IN THE UTAH SUPREME COURT

Rulon T. JEFFS, Kenneth Steed, James K. Zitting, Fred M. Jessop, Winston K. Blackmore, LeRoy S. Jeffs, Truman I. Barlow, and Parley J. Harker, trustees for the United Effort Plan, a Utah Trust, Plaintiffs, Appellants, and Cross-Appellees,

v.

Cora Fischer STUBBS, David L. Stubbs, John M. Williams, Merrill Harker, Harvey J. Dockstader, T. David Dockstader, Fayila M. Williams, Marko J. Dutson, Ray D. Timpson, George R. Hammon, Don D. Timpson, J. Legrand Hammon, John W. Timpson, Claude Cooke, Cyril Bradshaw, J. Michael Pipkin, Connell Bateman, Thomas J. Williams, Benjamin Bistline, Donald B. Cox, Defendants, Appellees, and Cross-Appellants.

No. 960454.

September 1, 1998.

ZIMMERMAN, Justice:

This case involves a dispute over the occupancy of land between twenty-one individuals ("the claimants") and the United Effort Plan Trust ("the UEP"). The claimants built improvements on land located in Hildale, Utah, and Colorado City, Arizona, which they occupy but which is owned by the

UEP. Claimants filed an action in Washington County, Utah, to determine their rights in the UEP land they occupy.

Claimants asserted ten causes of action: for relief under the Utah Occupying Claimants Act, for breach of express contract, breach of implied contract, negligent misrepresentation, constructive fraud, estoppel, unjust enrichment, breach of fiduciary duty, accounting, and distribution of trust. The trial court separated the first seven claims relating to the claimants' property rights for trial, holding in abeyance the three trust-based issues. After trial, the court relied on an unjust enrichment theory to hold that the claimants were entitled to occupy the UEP land during their lifetimes or to receive compensation for the improvements they made. The court imposed a constructive trust in favor of the claimants. The trial court denied relief on the three trust-based claims because it concluded that the UEP was a charitable and not a private trust.

Each party appealed. The UEP argues that (i) the trial court erred in awarding claimants a continuing interest in the land on an unjust enrichment theory and (ii) giving the claimants a continuing interest in the land infringes on the remaining UEP members' free exercise of religion and therefore violates the Utah and United States Constitutions. On their cross appeal, the claimants argue that the trial court erred (i) by applying the wrong legal standard to their claim under Utah's Occupying Claimants Act ("the Act") and (ii) in finding that the UEP is a charitable trust. We reject the UEP's arguments, affirm the trial court's unjust enrichment ruling, reverse its conclusion that the trust is charitable, reverse its interpretation of the Utah Occupying Claimants Act, and remand for further proceedings. Before proceeding

to our analysis, we set forth the facts taken from the trial court's extensive findings.

Sometime in the late nineteenth century, some members of the Church of Jesus Christ of Latter-Day Saints organized a movement called the Priesthood Work ("The Work") to continue the practice of plural marriage outside that church. In the early part of this century, The Work's leadership—the Priesthood Council—decided to settle its membership in an isolated area to avoid interference with their religious practices. In approximately the 1930s, The Work selected an area composed of Hildale, Utah, and Colorado City, Arizona—an area now known as Short Creek. The Priesthood Council secured a large tract of land in this area, and adherents of The Work began to settle there.

The Work continued to secure additional land in the area. Commonly, its adherents bought land and deeded it to The Work. Eventually, the leadership of The Work formed a trust to hold title to the land. This trust failed, and, for the most part, the land was deeded back to those who contributed it. In 1942, the Priesthood Council signed and recorded in Mohave County, Arizona, a Declaration of Trust for the United Effort Plan. After the Priesthood Council formed the UEP, adherents deeded most of the land that had been held by the first trust to the UEP. Over the years, the UEP acquired more land as adherents obtained and deeded it to the trust. The UEP currently owns all the land occupied by the claimants.

From its inception, the UEP invited members to build their homes on assigned lots on UEP land. Through this system, the UEP intended to localize control over all local real property and to have the religious leaders manage it. Members who built on the trust land were aware that they

could not sell or mortgage the land and that they would forfeit their improvements if they left the land. However, the UEP did encourage its members to improve the lots assigned to them and represented to its members that they could live on the land permanently, by using such phrases as "forever" or "as long as you wanted." The leaders also told members that having a home on UEP land was better than having a deed because creditors could not foreclose upon the land for members' debts.

Sometime during the late 1960's or early 1970's, dissention over a doctrinal issue arose among adherents of The Work, causing a split in the Priesthood Council. The dissension broke into the open in 1984 when adherents of The Work split into two groups: one group, led by Rulon T. Jeffs ("Jeffs"), acquired control of the UEP. A second group, led by J. Marion Hammon and Alma Timpson, includes most of the claimants in the present case.[1]

In 1986, Jeffs declared that all those living on UEP land were tenants at will. Before this declaration, neither the UEP nor any of its representatives had told the claimants that they were tenants at will. In 1987, the claimants filed an action in the Federal District Court for the District of Utah, asking the court to determine their rights in the property. The UEP, in turn, filed an unlawful detainer action and several quiet title actions against some of the claimants in state court in 1989 and 1993. The state court stayed these cases pending resolution of claimants' federal action. In 1993, the federal district court dismissed the federal claims for lack of subject matter jurisdiction and dismissed the pendent state law claims without prejudice. Shortly thereafter, the claimants

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[1] Some of the claimants now claim no affiliation with either group.

filed an action in Utah's district court in Washington County. The state court consolidated their action with the UEP's previously filed unlawful detainer action and several quiet title actions.

In these consolidated actions, the claimants presented a number of claims, the most pertinent of which is that they are entitled to their lots under the Utah Occupying Claimants Act, see Utah Code Ann. §§ 57-6-1 to -8, and, alternatively, that the UEP has been unjustly enriched by their improvements to the land. After a bench trial, the judge made findings of fact and granted claimants relief only on their unjust enrichment claim. It found as a matter of statutory interpretation that they were not covered by the Utah Occupying Claimants Act.

On appeal, the claimants argue that the trial court erred in applying the Act. They also argue that the trial court erred in finding that the UEP is a charitable, not a private, trust—a finding that precluded claimants from prevailing on their claims related to the conduct of the trustees. For its part, the UEP asserts that the trial court erred in granting claimants equitable relief, primarily because application of equitable principles to a religious organization violates the Utah and United States Constitutions. We address each issue in turn.

The standard of review for the trial court's interpretation of the Act is straightforward.[2] Because a district court's interpretation of a statute is a legal question, we review its ruling for correctness. *See MacKay v. Hardy*, 896 P.2d 626, 630-31 (Utah 1995). On the other hand, we uphold a trial

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[2] Only claimants occupying land situated in Utah have an action under Utah's Occupying Claimant Act. Arizona has no counterpart to this statute.

court's findings of fact unless they are "clearly erroneous." *See Drake v. Industrial Comm'n of Utah*, 939 P.2d 177, 181 (Utah 1997). Because appellant did not provide a trial transcript on appeal, we assume competent and substantial evidence supported the trial court's extensive factual findings. *See Goodman v. Lee*, 589 P.2d 759, 760 (Utah 1978) ("When no transcript is furnished on an appeal it is presumed that the evidence given was sufficient to sustain the judgment."); *Walker Bank & Trust Co. v. Neilson*, 26 Utah 2d 383, 490 P.2d 328, 329 (Utah 1971) ("The appellant elected not to bring before us any of the testimony presented to the trial court, and so we must presume such findings as were made to be based upon competent and substantial evidence."). Therefore, we will not overturn the trial court's factual findings. The determinative issues are, then, issues of law.

The first question is whether the trial court correctly interpreted the Utah Occupying Claimants Act. Section 57-6-1 of the Act provided:

> Where an occupant of real estate has color of title thereto, and in good faith has made valuable improvements thereon, and is afterwards in proper action found not to be the owner, no execution shall issue to put the plaintiff in possession of the same after the filing of a complaint as hereinafter provided, until the provisions of this chapter have been complied with.

Utah Code Ann. § 57-6-1 (1994) (emphasis added).[3] This statute requires occupying claimants to show that they (i)

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[3] Section 57-6-1 was amended in 1995, changing "plaintiff" to "owner" and making stylistic change. *See* Utah Code Ann. § 57-6-1 (Supp. 1997).

have "color of title" and (ii) made valuable improvements (iii) in good faith. *See Hidden Meadows Dev. Co. v. Mills*, 590 P.2d 1244, 1249 (Utah 1979). The district court found that the claimants had made valuable improvements. However, it did not determine whether claimants had color of title because it had first concluded that the claimants did not make the improvements in "good faith" as required by the statute.

We address the preliminary question of whether the claimants had color of title before addressing the determination that they lacked good faith. Section 57-6-4 of the Code defines "color of title." It states:

> [A]ny person has color of title who has occupied a tract of real estate by himself, or by those under whom he claims, [i] for the term of five years, or [ii] who has thus occupied it for less time, if he, or those under whom he claims, have at any time during such occupancy with the knowledge or consent, express or implied, of the real owner made any valuable improvements thereon, or [iii] if he or those under whom he claims have at any time during such occupancy paid the ordinary county taxes thereon for any one year, and two years have elapsed without a repayment of the same by the owner, and the occupancy is continued up to the time at which the action is brought by which the recovery of the real estate is obtained.

Utah Code Ann. § 57-6-4 (1994) (brackets and emphasis added).[4] Factually, categories (i) and (ii) cover all the claimants here. They either "occupied a tract of real estate ...

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[4] The quoted language is now found in section 57-6- 4(2)(a) (Supp. 1997).

for the term of five years," or they, or those under whom they claim, have made "valuable improvements" to real estate "with the owner's knowledge or consent." *See id.* The facts found by the district court show that the UEP knew that all the claimants were improving the land and encouraged them to do so. In many cases, claimants obtained consent from The Work's leadership to improve the land. The claimants, therefore, have color of title.

The next requirement under section 57-6-1 is that the claimants show that they made the improvements in "good faith." The trial court found that they did not. In defining the statutory term, "good faith," the trial court relied on case law stating that "[t]he good faith of an occupying claimant must be premised upon a reasonable and honest belief of ownership." *Ute-Cal Land Dev. Corp. v. Sather*, 645 P.2d 665, 667 (Utah 1982). The trial court concluded that the claimants did not make the improvements in good faith because they had "not even claimed that they actually own the land they occupy" and because "they were installed upon the property of the UEP, knowingly by those who were using the land by permission." We conclude that the trial court erred in its interpretation of "belief of ownership."

The trial court appears to have assumed that "ownership" means possession of a fee simple interest in land. But it is settled law that " '[o]wnership' is a collection of rights to possess, to use and to enjoy property, including the right to sell and transmit it.... [T]he term owner is often used to characterize the possessor of an interest less than that of absolute ownership, such as ... a tenant for life." 63C Am.Jur.2d *Property* § 26 (1997). We have no reason to think that when the Act was passed the legislature intended to restrict the meaning of the term "ownership" to a narrower

class of interests in land than the general law would allow.[5] We therefore conclude that a good faith belief in a life interest in land satisfies the good faith requirement of the Utah Occupying Claimants Act.

In the present case, the claimants acknowledged that they do not hold fee simple title. But the evidence before the trial court is entirely consistent with the claimants' having a good faith belief that they were entitled to possess the property during their lives so long as they did not abandon the property. The law describes such an interest as a life estate, and a life estate is an "ownership" interest. *See id.*[6] On this point, however, we must remand the matter for additional specific findings as to claimants' beliefs of a life estate interest.

The claimants presented evidence that the UEP represented to them that they could occupy the land for their lives or for as long as they lived on the land. And the trial court concluded that these representations "could reasonably have created in [claimants'] mind[s] an expectation that [they] would be able to live out [their] days on the [UEP] land so long as [they] did not sell the land, mortgage it or abandon its use." But because the trial court believed the Act required a

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[5] The only restriction intended by the legislature is indicated by the express language of section 57-6-1, stating that the Act should not be construed to create any ownership interest in a tenant against a landlord.

[6] Because the UEP represented to claimants that they could occupy the land for their lives, so long as they did not sell, mortgage, or abandon the property, the claimants' interest is actually a life estate subject to a condition subsequent. In other words, the UEP had both a reversionary interest, which vests upon the death of a claimant, and the possibility of reverter, which would only vest if a claimant sold, mortgaged, or abandoned the property. *See* Restatement of Property: Future Interests intro. n. & § 164 (1936).

good faith belief of a fee simple interest, it made no specific findings as to claimants' beliefs that they possessed a life estate interest. Absent such a belief, good faith would be lacking. If an appellate court determines that findings of fact are insufficient to support a necessary legal conclusion, the appellate court will normally remand the matter for further proceedings. *See Willey v. Willey*, 951 P.2d 226, 230 (Utah 1997). While we think the trial court would have made a finding of good faith belief in a life estate if it had been asked, we are not certain. Because it is not our place to find facts, *see id.* at 230-31 (citing *State v. Pena*, 869 P.2d 932, 936 (Utah 1994); *State v. Thurman*, 846 P.2d 1256, 1266 (Utah 1993)), we remand this issue to the trial court for additional findings and, if it deems appropriate, for additional evidence on the good faith issue.[7] If it concludes that some or all of the claimants have a life estate, then it should enter an order giving them a remedy under the Act.

This does not end this matter, however. Those claimants occupying land in Arizona have no remedy under the Utah Occupying Claimants Act. Therefore, we must still determine whether the trial court properly granted that group of claim-

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[7] The Utah Occupying Claimants Act provides the following remedy once the court determines that an occupier had color of title and made valuable improvements in good faith:

> The plaintiff in the main action may thereupon pay the appraised value of the improvements and take the property, but should he fail to do so after a reasonable time, to be fixed by the court, the defendant may take the property upon paying its value, exclusive of the improvements. If this is not done within a reasonable time, to be fixed by the court, the parties will be held to be tenants in common of all the real estate, including the improvements, each holding an interest proportionate to the values ascertained on the trial.

Utah Code Ann. § 57-6-3.

ants an equitable remedy under Arizona law. Similarly, if on remand, the trial court determines that some or all of the Utah claimants did not have a good faith belief in a life estate, we must determine if the court properly granted these claimants an enrichment equitable remedy under Utah law.

The UEP argues that the trial court erred in granting claimants equitable relief for two reasons: first, a court cannot assess the equities between religious entities; and, second, because claimants knew that the UEP owned the land, there is nothing inequitable about the UEP's keeping the improvements without compensating the claimants. Before addressing these issues, we note that we will analyze the trial court's equity ruling under both Arizona and Utah law because the court's equitable remedy affects real property in both Arizona and Utah. *See* Restatement (Second) of Conflicts of Law § 235 (1971) (providing that existence of equitable interest in land is usually governed by local law of situs of property). Therefore, we review the ruling affecting Arizona land under Arizona law and the ruling affecting Utah land under Utah law.[8] Even though we

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[8] Although the Utah and Arizona laws of unjust enrichment are very similar, we apply each state's law in deference to the general rule that the law of the situs applies. We also note that Arizona law recognizes the validity of a foreign state's rulings affecting Arizona land. In *Day v. Wiswall*, 11 Ariz. App. 306, 464 P.2d 626 (Ariz. Ct. App. 1970), the Arizona Supreme Court analyzed whether a foreign decree requiring a defendant to convey Arizona land or an interest therein is entitled to full faith and credit. *See id.* at 629. Concluding that an Arizona court would give such a decree full faith and credit, the court stated:

> If the defendant is personally before a court of equity, why doesn't the court have power to order him to convey foreign land? Such a decree is an effective judgment and determines conclusively his obligation to convey. This obligation remains binding on the defendant wherever found. Such a decree ought to be entitled to full faith and credit at the

apply the substantive law of two states, we still apply our own standard of review for all claims because standard of review is an issue inextricably tied to the forum, as we have previously noted. *See State v. Thurman*, 846 P.2d 1256, 1266-67 (Utah 1993). We now turn to our analysis.

The UEP first argues that the religious context of this case should prohibit a court from applying unjust enrichment principles. Essentially, the UEP argues that balancing the equities between the UEP and claimants is tantamount to judging the fairness of the UEP's religious practices and is therefore prohibited. We first note that under our Utah precedents, an issue of law, such as this, is reviewed for correctness and without deference to the trial court. *See Pena*, 869 P.2d at 936. On this law, we find nothing that would suggest that courts are not competent to hear cases involving religious entities.

Under both Arizona and Utah law, courts have broad authority to grant equitable relief as needed. *See Murdock-Bryant Constr., Inc. v. Pearson*, 146 Ariz. 48, 703 P.2d 1197, 1202 (Ariz.1985); *see also Arizona v. Arizona Pension Planning*, 154 Ariz. 56, 739 P.2d 1373, 1375 (Ariz.1987) (*en banc*); *Commercial Cornice & Millwork, Inc. v. Camel Constr. Servs. Corp.*, 154 Ariz. 34, 739 P.2d 1351, 1356 (Ariz.Ct.App.1987); *American Towers Owners Assoc., Inc. v. CCI Mechanical*, 930 P.2d 1182, 1192-93 (Utah 1996); *Concrete Prods. Co. v. Salt Lake County*, 734 P.2d 910 (Utah 1987); *Baugh v. Darley*, 112 Utah 1, 184 P.2d 335 (Utah

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situs of the land.

Id. Here, there appears to be no question that we have power to determine the parties' interest in land in Arizona.

1947). And nothing in the general rules of equity applicable in both states prohibits a court from deciding an equity case because the parties are religious entities. The UEP has cited no Arizona or Utah law suggesting that a court should limit the application of the doctrine of unjust enrichment solely because of the religious nature of the relationship and motivation of the UEP and claimants. And federal constitutional law imposes no such limitation. United States Supreme Court precedent suggests that courts may entertain property disputes between religious organizations. In *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969), the Court stated:

> Thus, the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. But ... the Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine.

Id. at 449, 89 S.Ct. 601. The limitations of which the Supreme Court spoke have no application here because no question of church doctrine is central to this case. We therefore conclude that in Arizona and Utah nothing prevents a civil court from hearing an ordinary equity case between

religious entities or factions, or between a religious entity and a private litigant.[9]

The UEP's second argument is that because the claimants knew they did not own the land, there is nothing inequitable about the UEP's keeping the improvements without compensating claimants. We first address the standard of review. The determination that the UEP was unjustly enriched by the claimants is a mixed question of law and fact. We uphold a lower court's findings of fact unless the evidence supporting them is so lacking that we must conclude the finding is "clearly erroneous." *See Reid v. Mutual of Omaha Ins. Co.*, 776 P.2d 896, 899 (Utah 1989) (citing Utah R. Civ. P. 52(a)). As stated earlier, we assume competent and substantial evidence supported the trial court's findings because appellant did not provide a transcript on appeal. *See Goodman,* 589 P.2d at 760. In contrast, we review a trial court's conclusions as to the legal effect of a given set of found facts for correctness. *See Pena*, 869 P.2d at 936. Although we review legal questions for correctness, we may still grant a trial court discretion in its application of the law to a given fact situation. As we explained in *Pena*, we decide how much discretion to give a trial court in applying the law in a particular area by considering a number of factors pertinent to the relative expertise of appellate and trial courts in addressing those issues. *See id.* at 938-39. Factors weighing in favor of broad discretion include: (i) whether "the facts to which the legal rule is to be applied are so

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[9] In declining to adopt the UEP's assertion that the religious context of the parties' relationship precludes an equitable award, we do not intend to avoid considering the effect of the parties' religious relationship on the appropriateness of the trial court's award, an issue raised by the UEP. However, we will consider that question, infra, when we determine the constitutionality of the district court's decision.

complex and varying that no rule adequately addressing the relevance of all these facts can be spelled out"; (ii) whether "the situation to which the legal principle is to be applied is sufficiently new to the courts that appellate judges are unable to anticipate and articulate definitively what factors should be outcome determinative"; and (iii) whether "the trial judge has observed 'facts,' such as a witness's appearance and demeanor, relevant to the application of the law that cannot be adequately reflected in the record available to appellate courts. *Id.* at 939. A factor weighing against broad discretion is whether there are reasons of policy that require standard uniformity among trial courts addressing the question. *See id.*

We will address each of the *Pena* factors to determine the degree of discretion appellate courts should confer on trial courts when reviewing the legal conclusion that a set of facts does or does not warrant a conclusion that unjust enrichment has been shown. First, the facts underlying an unjust enrichment claim are often complex and vary greatly from case to case. Indeed, by its very nature, the unjust enrichment doctrine developed to handle fact situations that did not fit within a particular legal standard but which nonetheless merited judicial intervention. *See* Restatement of Restitution, intro. n. (1937) (noting that narrow early common law causes of actions posed difficulties and required creation of chancery courts because "there were many situations in which one justly entitled to recover was not able to do so"). Because the fact patterns in unjust enrichment cases are generally complex and varying, the first *Pena* factor favors providing the trial court with broad discretion in applying the law to fact situations.

The second *Pena* factor addresses whether appellate courts have sufficient experience with an area of law and the

situation to which the law applies that they are capable of articulating clearly and definitely the outcome determinative factors. It is true that the unjust enrichment doctrine has ancient roots, and courts have had a great deal of opportunity to apply it. However, the court's ability to state clearly the outcome-determinative factors remains elusive. The Arizona Supreme Court, in discussing the equitable rules it applies, and which we apply here, notes the rules' indeterminativeness:

> The circumstances of this case are somewhat unique.... The Restatement of Restitution ... does not cover the factual circumstances presented by the case at bench. This is not determinative, however, because the remedy of restitution is not confined to any particular circumstance or set of facts. It is, rather, a flexible, equitable remedy available whenever the court finds that "the defendant, upon the circumstances of the case, is obliged by the ties of natural justice and equity" to make compensation for benefits received.
>
> We have also recognized the rationale for restitutionary relief, stating that restitution ... is available "as a matter of reason and justice from the acts and conduct of the parties and circumstances surrounding the transactions, ... and [is] imposed for the purpose of bringing about justice without reference to the intentions of the parties.

Murdock-Bryant Constr., 703 P.2d at 1202 (citations omitted); *see also Commercial Cornice & Millwork*, 739 P.2d at 1356; *Arizona Pension Planning*, 739 P.2d at 1375. We cannot adequately predict in any detail the elements in a situation such as the present that will or will not definitely merit an unjust enrichment remedy. Therefore, this *Pena*

factor favors granting the court below a broad degree of discretion in applying the law.

The third *Pena* consideration is whether non-record evidence, such as demeanor, is available to the trial court and not the appellate court. Our discussion of the first two factors indicates that the record in an unjust enrichment case generally will not reflect considerations crucial to a trial court's ruling. This is particularly true when the trial court hears contradictory evidence from witnesses about the transaction's circumstances and must examine the relevance of each party's acts and conduct, and assess credibility and demeanor. The present case presents an unusual circumstance: the UEP did not provide a copy of the transcript from the six-week trial. This significantly impairs this court's ability to understand all the facts relevant to the trial court's ruling and gives us a further reason to conclude that in this case this factor favors broad discretion.

The fourth *Pena* factor, one countervailing to those favoring broad discretion, asks if there are policy reasons requiring uniformity among trial courts addressing these issues in similar fact circumstances. This factor seems weak in this case. First, fact situations will vary greatly in most unjust enrichment cases. Second, such a finding will not generally implicate substantial constitutional interests. *See Pena*, 869 P.2d at 938-39. We therefore find nothing here that would outweigh the factors favoring broad discretion. Unjust enrichment law developed to remedy injustice when other areas of the law could not. Unjust enrichment must remain a flexible and workable doctrine. Therefore, we afford broad discretion to the trial court in its application of unjust enrichment law to the facts.

We now turn to our analysis of the trial court's application of the law. Arizona recognizes the equitable remedy of unjust enrichment and generally provides that "'[a] person who has been unjustly enriched at the expense of another is required to make restitution to the other.'" *Murdock-Bryant Constr.*, 703 P.2d at 1202 (quoting Restatement of Restitution § 1 (1937)). A person is unjustly enriched if (i) he received a benefit, and (ii) his retention of that benefit would be unjust. *See Flooring Systems, Inc. v. Radisson Group, Inc.*, 160 Ariz. 224, 772 P.2d 578, 581 (Ariz.1989) (en banc). We find that the trial court correctly concluded that claimants proved both elements.

Regarding the first element, the trial court found: "There can be no doubt from the evidence presented that [claimant] has conferred a benefit on the UEP by improving the lot." Arizona law defines a benefit as "any form of advantage." *Artukovich & Sons, Inc. v. Reliance Truck Co.*, 126 Ariz. 246, 614 P.2d 327, 329 (Ariz.1980) (*en banc*). In making its finding, the court relied on evidence showing that the claimants spent a considerable amount of money and time improving the UEP land, that these improvements increased the value of the land, and that the UEP will benefit from the increased value. We agree that this evidence supports the finding that the UEP received some advantage, and, thus, a benefit.

The claimants must also show that the UEP's retention of these benefits would be unjust. The UEP argues that because the claimants knew that the UEP owned the land and because the claimants intended to "donate" the improvements, they cannot recover. We disagree.

In determining whether it would be unjust to allow the retention of benefits without compensation, Arizona law provides that:

> a court need not find that the defendant intended to compensate the plaintiff for the services rendered or that the plaintiff intended that the defendant be the party to make compensation. This is because the duty to compensate for unjust enrichment is an obligation implied by law without reference to the intention of the parties. What is important is that it be shown that it was not intended or expected that the services be rendered or the benefit conferred gratuitously, and that the benefit was not "conferred officiously."

Murdock-Bryant Constr., 703 P.2d at 1203 (emphasis added) (internal citation omitted) (*quoting Pyeatte v. Pyeatte*, 135 Ariz. 346, 661 P.2d 196, 203 (Ariz.Ct.App.1983)); *see also Flooring Systems*, 772 P.2d at 581. Thus, under Arizona law, the trial court had to find that (i) services were conferred, (ii) the services were not conferred "officiously," and (iii) it was not intended that the services were "gratuitously" conferred. As we explained above, the trial court found that the claimants conferred a benefit on the UEP—they rendered services by improving the UEP lots.

As to the second element, the claimants plainly did not confer the services officiously. "Officiousness means interference in the affairs of another not justified by the circumstances under which the interference takes place." Restatement of Restitution § 2 cmt. a (1937). Thus, an officious person is one who "thrust[s] benefits upon others." *Id.* Here, the claimants did not interfere or thrust benefits on the UEP.

To the contrary, the UEP encouraged the claimants to improve the land. The trial court found:

> There can also be no doubt that the trust was aware of the benefit as its representatives encouraged the construction and the improvement of the lot by the occupant and watched the building going in. The issue is whether, given the facts of this case, it would be inequitable to allow the UEP to retain the benefit without compensation.... The Court is of the opinion that such a result would be inequitable.

Finally, the claimants did not confer their services gratuitously. One renders services gratuitously if at the time they were rendered, there was no expectation of "a return benefit, compensation, or consideration." Webster's New Int'l Dictionary 992 (3d ed.1961); see also 66 Am.Jur.2d, Restitution § 26 (1973). We conclude that because the claimants built the improvements with the intention that they could occupy them for their lifetimes, they did not confer them gratuitously.

The Restatement of Restitution, which Arizona courts follow in the absence of contrary authority, *see Bank of America v. J. & S. Auto Repairs*, 143 Ariz. 416, 694 P.2d 246, 248 (Ariz.1985), is instructive in determining whether one rendered services gratuitously. Section 40 provides:

> A person who has rendered services to another ... is entitled to restitution therefor if the services were rendered ... in the mistaken belief, of which the other knew or had reason to know, that the services would inure to the benefit of the one giving them....

Restatement of Restitution § 40 (1937). Thus, one who renders services with the reasonable expectation of a returned benefit does not render the services gratuitously. Section 42 of that Restatement, which limits a party's right to recovery for improvements to land,[10] specifies that section 40 applies when the true owner, "having notice of the error and of the work being done, stands by and does not use care to prevent the error from continuing." *Id.* § 42 cmt. b. A comment to section 40 clarifies that an owner "cannot retain a benefit which knowingly he has permitted another to confer upon him by mistake." *Id.* § 40 cmt. d.

The trial court concluded that the claimants "expected to use the property into the foreseeable future" and "[a]s a result [they] invested lots of money and time in the improvement of the property." The court also found that the claimants improved the land with the knowledge and encouragement of the UEP and with the understanding that they could remain on the land for their lifetimes. The court further indicated

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[10] Section 42(1) of the Restatement of Restitution, governing improvements upon land or chattels, provides:

> Except to the extent that the rule is changed by statute, a person who, in the mistaken belief that he or a third party on whose account he acts is the owner, has caused improvements to be made upon the land of another, is not thereby entitled to restitution from the owner for the value of such improvement; *but if his mistake was reasonable*, the owner is entitled to obtain judgment in an equitable proceeding or in an action for trespass ... only on condition that he makes restitution to the extent that the land has been increased in value by such improvements, or for the value of labor and materials employed in making such improvements, whichever is least.

Restatement of Restitution § 42(1) (1937) (emphasis added). Thus, if a person who made improvements had a reasonable belief of ownership, the true owner may eject the party who made the improvements only after paying restitution for the improvements.

that the UEP failed to disabuse claimants of their beliefs that they could remain on the land for their lifetimes. The court stated:

> The UEP must bear a large share of the blame for the confusion as to the terms of occupancy since it did not communicate to [claimants] directly the conditions of [their] occupancy ... even though the trust was engaged in a long term and wide spread program of settling its people on UEP lands. It would have been easy to prepare a list of conditions of occupancy and to distribute the list to those preparing to invest heavily in improvements with the encouragement and agreement of the trust.

Applying the law to these facts, we conclude that the trial court's disposition was adequately supported by the evidence and was consistent with the Arizona substantive law. We therefore find that the trial court did not abuse its discretion in requiring the UEP to allow claimants to live on the land for their lifetimes or to compensate them for the improvements.

We next consider the trial court's unjust enrichment ruling under Utah law, as that law governs the claims of any Utah residents who may not be covered by the Occupying Claimants Act or for whom an equitable remedy is more favorable. Utah law, like Arizona's, recognizes the remedy of unjust enrichment. A party may prevail on an unjust enrichment theory by proving three elements:

> "'(1) a benefit conferred on one person by another; (2) an appreciation or knowledge by the conferee of the benefit; and (3) the acceptance or retention by the conferee of the benefit under such circumstances as to make it inequit-

> able for the conferee to retain the benefit without payment of its value.'"

American Towers Owners, 930 P.2d at 1192 (citations omitted). Although these elements are phrased differently than Arizona's, we find the analysis to be much the same.

Regarding the first two elements, the trial court, as discussed above, found that claimants conferred a benefit by improving the property and that the UEP knew about, and, indeed, encouraged the improvements.

We addressed the third element in *Baugh v. Darley*, 112 Utah 1, 184 P.2d 335 (Utah 1947). This court stated:

> Unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another. The benefit may be ... beneficial services conferred....
>
> ....
>
> Services officiously or gratuitously furnished are not recoverable. Nor are services performed by the plaintiff for his own advantage, and from which the defendant benefits incidentally, recoverable.

Id. at 337 (internal citations omitted). Here, the claimants improved the land in reliance upon the UEP's representations that they could live on the land for the rest of their lives. Even though the claimants intended to benefit from the improvements by occupying them during their lifetimes, the claimants' services still conferred a direct, not incidental, benefit on the UEP. Thus, we uphold the trial court's

equitable remedy for all claimants, both those occupying land in Arizona and Utah.

The UEP next argues that the trial court's particular equitable remedy violates both article I, section 4 of the Utah Constitution and the First Amendment to the United States Constitution because the ruling burdens the free exercise of its members' religious beliefs. Specifically, the UEP asserts that the ruling is unconstitutional because it measures "religious expression against secular standards of fairness."[11]

When presented with a constitutional challenge to a law, we presume the law is valid. *See Society of Separationists, Inc. v. Whitehead*, 870 P.2d 916, 920 (Utah 1993). A party mounting such a challenge bears a heavy burden to overcome this presumption, and " 'we resolve any reasonable doubts in favor of constitutionality.' " *Dennis v. Summit County*, 933 P.2d 387, 389 (Utah 1997) (quoting *Society of Separationists*, 870 P.2d at 920). Moreover, when a party asserts claims under both the Utah and federal Constitutions, this court ordinarily first determines the issue under the Utah Constitution and only resorts to the federal Constitution if the state constitution is not dispositive. *See West v. Thomson Newspapers*, 872 P.2d 999, 1004-07 (Utah 1994).

With this in mind, we first address whether the trial court's equitable ruling violates article I, section 4 of the Utah Constitution. It provides:

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[11] The UEP also argued that the trial court's ruling violated the Religious Freedom Restoration Act of 1993. See 42 U.S.C. §§ 2000bb to 2000bb-4. However, we do not address this claim because the United States Supreme Court recently ruled that the act was unconstitutional. *See City of Boerne v. Flores*, 521 U.S. 507, ----, 117 S.Ct. 2157, 2172, 138 L.Ed.2d 624 (1997).

> The rights of conscience shall never be infringed. The State shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; no religious test shall be required as a qualification for any office of public trust or for any vote at any election; nor shall any person be incompetent as a witness or juror on account of religious belief or the absence thereof. There shall be no union of Church and State, nor shall any church dominate the State or interfere with its functions. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or for the support of any ecclesiastical establishment. No property qualification shall be required of any person to vote, or hold office, except as provided in this Constitution.

Utah Const. art. I, § 4 (emphasis added). The UEP argues this section provides greater protection for religious institutions than the federal constitution. Accordingly, it asks this court to hold that any law that in any way burdens free exercise violates article I, section 4 unless the proponent of the law shows that it is supported by a compelling state interest and is the least restrictive means of accomplishing that end.

This proposed test does not come from the language of the constitution or from our case law, which has never addressed this question. Rather, the UEP grounds its proposed test on two United States Supreme Court decisions under the First Amendment's Free Exercise Clause, *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972), and *Sherbert v. Verner*, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963). It is noteworthy, however, that the Supreme Court's most recent cases decided under the Free Exercise Clause state that the compelling interest test of

Yoder and *Sherbert* is not the prevailing federal constitutional test. Rather, under the Free Exercise Clause of the First Amendment, a state law that incidentally burdens the exercise of religion is not unconstitutional so long as the law is not intended to burden free exercise, is of general applicability, and is otherwise valid. *See Employment Div. Dept. of Human Res. v. Smith*, 494 U.S. 872, 879, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990) (stating that Supreme Court decisions "have consistently held that the right of free exercise does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)' " (quoting *United States v. Lee*, 455 U.S. 252, 263 n. 3, 102 S.Ct. 1051, 71 L.Ed.2d 127 (1982)).[12]

We have never determined whether the free exercise clause of article I, section 4 of the Utah Constitution provides protection over and above that provided by the First Amendment to the United States Constitution. And we do not decide that question today: even if we assume, arguendo, that the compelling interest test the UEP proposes applies, the UEP cannot prevail on the facts of this case. Because the

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[12] In *Smith*, the Court explained that the only decisions in which it had found a neutral, generally applicable law violated the First Amendment

> involved not the Free Exercise Clause alone, but the Free Exercise Clause in conjunction with other constitutional protections, such as ... the rights of parents ... to direct the education of their children, *see Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972) (invalidating compulsory school-attendance laws as applied to Amish parents who refused on religious grounds to send their children to school).

Smith, 494 U.S. at 881, 110 S.Ct. 1595.

UEP's state constitutional claim fails under the more rigorous compelling state interest test, we need not consider the UEP's federal First Amendment claim because it is governed by the less rigorous test articulated in *Smith*. *See* 494 U.S. at 879, 110 S.Ct. 1595.

We now turn to an application of the compelling state interest test. Under the test advanced by the UEP, a facially neutral law may "offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion." *Yoder*, 406 U.S. at 220, 92 S.Ct. 1526. However, a law that burdens free exercise is nonetheless constitutional if it furthers a compelling state interest and is the least restrictive means of accomplishing that interest. *See Yoder*, 406 U.S. at 214-15, 92 S.Ct. 1526; *Sherbert*, 374 U.S. at 406-408, 83 S.Ct. 1790; *see also Thomas v. Review Bd. of the Indiana Employment Sec. Div.*, 450 U.S. 707, 718, 101 S.Ct. 1425, 67 L.Ed.2d 624 (1981). For purposes of applying this test only, we will assume that the trial court's ruling burdened the UEP members' free exercise rights.[13] Thus, we

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[13] Both parties' briefs addressed whether the trial court's ruling imposed a "substantial burden" on free exercise. The claimants cite a Tenth Circuit case for its argument that before establishing a First Amendment violation, a party must first show a substantial burden on religious exercise. *See Werner v. McCotter*, 49 F.3d 1476, 1480 (10th Cir.), *cert. denied*, 515 U.S. 1166, 115 S.Ct. 2625, 132 L.Ed.2d 866 (1995). The Tenth Circuit, however, decided *Werner* under the Religious Freedom Restoration Act ("RFRA"), which Congress passed in 1993. See 42 U.S.C. §§ 2000bb to 2000bb-4. RFRA provided:

> Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person--
>
> (1) is in furtherance of a compelling governmental interest; and
>
> (2) is the least restrictive means of furthering that compelling

must determine if the court's ruling is the least restrictive means of accomplishing a compelling state interest. We conclude that it is.

A compelling state interest is a "paramount" interest, one of "the highest order." *Sherbert*, 374 U.S. at 407, 83 S.Ct. 1790. The UEP argues that the interest at issue is requiring one church body to maintain religious dissenters on church lands or monitoring the fairness of a religious program, and it argues that neither of these interests is compelling. The UEP, however, misstates the relevant interest.

We conclude that the state's interest here revolves around the judicial system, not the specific results of the judicial action. This is because the UEP contends that no remedy could be returned by the trial court on these claims without violating the state constitution. The state has a compelling interest in ensuring that all parties are able to resolve legal disputes before a neutral tribunal. Utah's open courts provision states: "All courts shall be open, and every person, for any injury done to him in his person, property or reputation shall have a remedy by due course of law." Utah const. art. I, § 11. This provision ensures that courts are to be accessible to all for the resolution of their disputes and makes clear that this right to come into court is a fundamental value of our governmental compact. *See Berry ex rel. Berry v. Beech*

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governmental interest.

42 U.S.C. § 2000bb-1(b) (emphasis added). Even though both parties integrate the "substantial burden" requirement into their constitutional analyses, we need not decide if the compelling state interest standard applies only after a showing that the law imposed a "substantial burden" on free exercise. Instead, we can assume for this case only that the compelling interest test applies upon a showing that the law imposes any burden on free exercise.

Aircraft Corp., 717 P.2d 670, 675 (Utah 1985) ("The clear language of the section guarantees access to the courts and a judicial procedure that is based on fairness and equality."); *Bracken v. Dahle*, 68 Utah 486, 251 P. 16, 20 (Utah 1926) ("The right to apply to the courts for relief for the perpetration of a wrong is a substantial right."). While this clause may not guarantee any specific remedy, it certainly guarantees access to the courts. *See generally Berry*, 717 P.2d at 675.

If we were to accept the UEP's claim that we should refuse to resolve the claimants' case solely because of the assertion that Utah's courts cannot resolve disputes between religious entities, that refusal would deny this fundamental right to the claimants. In addition, such a refusal of a remedy alone might constitute an action violative of state or federal Establishment and Free Exercise Clauses. As one scholar has reasoned:

> Although the application of a unique set of legal principles developed in the context of the first amendment [and article I, section 4] jurisprudence may be required to evaluate the impact of governmental activity on religious concerns, these unique principles should not apply for resolving internal religious disputes. In such a dispute, the most important value to maintain is equality between religious factions. Without equality of treatment, courts risk establishing one religious faction at the expense of the free exercise of the other religious faction.

Patty Gerstenblith, *Civil Court Resolution of Property Disputes Among Religious Organizations*, 39 Am. U.L.Rev.

513, 515 (1990). Another scholar summarized the problem as follows:

> It would be simple indeed to deal with all these conflicts with a policy of noninvolvement.... But courts serve neither the church nor its members by placing their affairs in a special law-free zone. Law free is also lawless, and the consequence is that neither the faithful, nor the church or those with which it deals, can rely on the other parties playing by the rules, for there are then no enforceable rules.

Ira M. Ellman, *Driven from the Tribunal: Judicial Resolution of Internal Church Disputes*, 69 Cal. L.Rev. 1378, 1444 (1981). We conclude that courts must treat property disputes between religious factions "in the same manner they treat disputes among other voluntary associations." Gerstenblith, *supra*, 39 Am. U.L.Rev. at 520. In the present case, by resolving the dispute between the UEP and claimants, the trial court furthered the compelling state interest in keeping the courts open. Therefore, we find the UEP's claim would fail even if we were to adopt the test it suggests. The trial court's award was carefully crafted to be the least restrictive means available to further the state's compelling interest. The remedy provided the claimants redress for their injuries in a manner that minimizes the burden upon free exercise. The court's ruling allows the UEP to force the claimants off the UEP land at any time. The UEP need only compensate claimants first for the benefits it received. The court's adjudication of this matter did not violate article I, section 4.

We now turn to the claimants' cross appeal, which urges this court to reverse the trial court and hold that the UEP is a private trust, not a charitable trust. The claimants make this

assertion because the trial court's conclusion that the UEP trust is charitable denied claimants standing to assert their breach of fiduciary duty, accounting, and distribution claims. See Restatement of Restitution § 391 (1959).

The trial court based its conclusion that the trust is charitable on a number of facts: the trust states that it is charitable; the document designated no specific beneficiaries; that members of the trust have no entitlement to benefits because the trustees have discretion to distribute benefits as they see fit; and future members' consecrations to the trust buy them nothing. Specifically, the court stated:

> The Court has found, based on the evidence presented at trial and the clear language and unambiguous portions of the declaration, that the creators of the trust were motivated by their religious beliefs to create a trust to hold title to property donated by adherents to their religious faith, including themselves, and to engage in business enterprises for the benefit of the followers of the Work.

The trial court relied on extrinsic evidence relating to the intentions of the trusts' original settlors. However, in determining whether a trust is charitable, a court must look to the language of the trust instrument and may not look beyond it unless the instrument's language does not resolve the issue. *Cf. Olivas v. Board of Nat'l Missions of Presbyterian Church*, 1 Ariz. App. 543, 405 P.2d 481, 485 (Ariz.Ct.App.1965); *see also* Restatement (Second) of Trusts § 38 (1959) (providing that parol evidence rule applies to interpretation of trusts). Therefore, we review the language of the trust first. This review of the trust instrument is a question of law. *See In re Ferguson*, 929 P.2d 33, 35 (Colo.

Ct. App. 1996).[14] If we find no ambiguity, we need not consider the extrinsic evidence relied on by the trial court.

"A charitable trust is a fiduciary relationship with respect to property arising as a result of a manifestation of an intention to create it, and subjecting the person by whom the property is held to equitable duties to deal with property for a charitable purpose." Restatement (Second) of Trusts § 348; *see also State ex rel. Goddard v. Coerver*, 100 Ariz. 135, 412 P.2d 259, 263 (Ariz.1966). "A fundamental distinction between [private trusts and charitable trusts] is that in a private trust property is devoted to the use of specified persons who are designated as beneficiaries of the trust; whereas a charitable trust has as a beneficiary a definite class and indefinite beneficiaries within the definite class, and the purpose is beneficial to the community." *Olivas*, 405 P.2d at 485. Thus, a charitable trust has two essential requirements: indefinite beneficiaries and a purpose beneficial to the community.

We turn to the first element, the indefiniteness of the beneficiaries. In order to qualify as a charitable trust, the trust instrument must indicate that "the persons who are to benefit are ... of a sufficiently large or indefinite class so that the community is interested in the enforcement of the trust." Restatement (Second) of Trusts § 375. In a charitable trust, "the beneficial interest is not given to individual

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[14] Because there is no conflict between the Utah and Arizona law governing this trust, we choose to apply Utah law. *See Morris v. Sykes*, 624 P.2d 681, 684 (Utah 1981) (holding that where no significant differences exist between Utah law and law of other states, "the court *may* properly apply Utah law in the absence of an affirmative showing that the law of [the other state] is different" (emphasis added)). However, we look to and adopt the reasoning of Arizona cases we find persuasive.

beneficiaries, but the property is devoted to the accomplishment of purposes beneficial to the community." *Id.* § 364 cmt. a. Thus, if a trust only names specific beneficiaries, the trust is not charitable even if it has a charitable purpose such as relieving the named beneficiaries from poverty, providing them education, or promoting their religious welfare. *Cf. id.* § 375 cmt. b; *id.* § 371 cmt. f (providing that "a trust for the religious benefit of persons designated by name ... is not a charitable trust").

The Declaration of Trust provides:

> it is understood and agreed that *we and such other members as may hereafter come into said association are associated together merely and solely for purposes of being cesti que trustents [sic] of the trust hereby created*, thus being entitled to equitable and beneficial interests of all profits and property, both personal, real and mixed, of the trust estate created, in accordance with their just wants and needs as determined from time to time by the Board of Trustees and as the trust estate may be able to respond thereto....
>
> *Membership in the trust estate is established for the signers of this instrument* ... by conveyance to the trust estate of the following property.... Evidence of membership shall be shown in the books of the association.
>
> Further and additional membership shall be established and added by the consecration of such property....

Declaration of Trust (Nov. 9, 1942) (emphasis added). Thus, the UEP trust document states that the signers of the

instrument became trust members and associated "for purposes of being cesti que trustents of the trust." Cestui que truste are "[t]he beneficiar[ies] of a trust." *Blacks Law Dictionary* 229 (6th ed. 1990). From its inception, the trust benefitted specific individuals. Therefore, the trial court erred in concluding that the trust had no specific beneficiaries and was charitable.

The trial court also relied on several other factors in concluding that the trust was charitable. These factors were that (i) the members received nothing for their consecrations, (ii) the document states that the trust is charitable, and (iii) the trust grants the trustees sole discretion to distribute benefits. We have reviewed these factors and conclude that as a matter of law, none of them make the trust charitable.

First, we cannot agree with the trial court that members' consecrations buy them nothing. The trust instrument clearly contemplates that beneficiaries must consecrate property to benefit from the trust. But that does not make it charitable. One scholar has noted:

> If members of a large group make contributions toward a common fund, to be administered by trustees, the income and capital to be used to furnish help to the contributors or their relatives if they are sick, disabled, or out of work, the courts do not treat the trust as charitable, but rather as a private trust or as giving contractual rights in the nature of insurance. They lay stress on the fact that the [beneficiaries] have purchased their benefits. It is said sometimes that in the case of a true charitable trust, those to be aided must be suppliants, and must take their benefits gratuitously.

George E. Bogert, *The Law of Trusts* 138 (4th ed. 1963). The UEP trust gives a beneficial interest to named individuals—the members. To become a member, an individual must consecrate property to the trust. We conclude that under these circumstances, the consecration requirement is not indicative of a charitable trust.

Second, we find the trust's declaration to be nondeterminative under the circumstances. The declaration states, "The purpose and object of the trust shall first be charitable and philanthropic." Declaration of Trust, ¶ VIII. In an Arizona case in which the language of a testamentary trust attempted to devise property to specific heirs and to create a charitable trust with the residue of the estate, the Arizona Supreme Court stated:

> although the clear intention of the testatrix was that the trustees ... should apply the residue of her estate in ways beneficial to the Town of Paonia, or the Paonia schools, her good intentions alone cannot create a valid charitable trust where the language of the clause makes it possible for the property to be devoted to purposes other than "charitable" as defined by the law.

In re Hayward's Estate, 65 Ariz. 228, 178 P.2d 547, 550 (Ariz. 1947). This reasoning applies here. Even though the settlors called the trust charitable, they structured the trust so that it would benefit specific individuals. In short, the settlors declared intentions cannot overcome other operative language in the trust making it a private trust.

Finally, we address the trial court's conclusion that the trust is charitable because the trust grants the trustees sole discretion to distribute benefits. We agree that the trust

language bestows such discretion; however, we disagree with the trial court's conclusion that vesting discretion in a trustee makes a trust charitable. The Restatement (Second) of Trusts provides that a settlor may create a discretionary trust. Comment d to section 128 provides: "By the terms of the trust it may be provided that the trustee shall pay to or apply for a beneficiary only so much of the income and principal or either *as the trustee in his discretion* shall see fit to pay or apply." Restatement (Second) of Trusts § 128 cmt. d (emphasis added). Thus, nothing prohibits a settlor from giving the trustee of a private trust discretionary power over distributions. Because that trust names specific beneficiaries and because nothing else in the trust overcomes the general rule that naming specific beneficiaries render a trust private, we conclude the UEP trust is private.

In conclusion, we uphold the trial court's equitable ruling allowing claimants to remain on the land for their lifetimes or requiring the UEP to compensate the claimants for the benefit it received if the UEP seeks to remove claimants. However, we find that the trial court erred in its interpretation of the Utah Occupying Claimants Act and that the findings are insufficient for us to determine whether any or all of the claimants have life estates. Further, we find that the trial court erred in ruling that the UEP trust is a charitable trust. Therefore, we remand that issue to the trial court for further proceedings consistent with this opinion.

HOWE, C.J., DURHAM, A.C.J., and RUSSON, J., concur in Justice ZIMMERMAN'S opinion.

STEWART, J., dissents.

APPENDIX D

IN THE SUPREME COURT OF THE STATE OF UTAH

Rulon T. JEFFS, trustee for the United Effort Plan, a Utah Trust, et al., Plaintiffs, Appellants, and Cross-Appellees,

v.

Cora Fischer STUBBS, et al., Defendants, Appellees, and Cross-Appellants.

No. 960454.

ORDER

This matter is before the Court on Appellants' Petition for Rehearing. Appellants' petition is denied.

FOR THE COURT:

November 18, 1998 /s/ Richard C. Howe
Chief Justice

APPENDIX E

EXCERPTS OF STATE COURT RECORD

ANSWER TO COMPLAINT

The federal question was first raised in the affirmative defenses included in the petitioners' answer to the complaint initiating this action. Answer of United Effort Plan, *et. al.*, pages 13-18.

Twelfth Affirmative Defense

The United Effort Plan Trust is a religious subsidiary of a fundamentalist religious association, currently organized as the Fundamentalist Church of Jesus Christ of Latter Day Saints. Land owned by the United Effort Plan was donated as a religious consecration by faithful members of the Fundamentalist Church of Jesus Christ of Latter Day Saints, or purchased with the consecrated donations of church members. The Fundamentalist Church of Jesus Christ of Latter Day Saints and the United Effort Plan recognize a sacred obligation to ensure that these consecrations continue to be used to support the work of the Church.

The Trustees of the United Effort Plan are answerable only to the President of the Fundamentalist Church of Jesus Christ of Latter Day Saints. Neither the United Effort Plan Trust, nor its parent organization, the Fundamentalist Church of Jesus Christ of Latter Day Saints, have any accounting or reporting obligation towards apostates from the Church, including the Plaintiffs, or to the public at large.